

Joint Hearing
House Judiciary Committee
House Appropriations Subcommittee on Corrections

March 19, 2007

Testimony of
Citizens Alliance on Prisons and Public Spending

Chairperson Smith, Chairperson Condino, Members of the Committees: Good afternoon.

My name is Barbara Levine. I'm the executive director of CAPPS, the Citizens Alliance on Prisons and Public Spending, a nonprofit public policy organization with a dual mission. CAPPS members are concerned that Michigan incarcerates far more people than is necessary for public safety. This not only takes a high toll on prisoners and their families, it drains scarce resources from the very services that contribute to crime prevention. Thus we advocate reducing the prisoner population and investing instead in children and families, in education and health care, in mental health and substance abuse treatment, and in support for former prisoners returning to the community.

The growth in corrections is in no way inevitable. It is not driven by crime rates or by other factors beyond our control. It is the result of policy choices made over the last 20 years. So I am very grateful for the opportunity to speak directly with the people who are in a position to reassess those policy choices and set a new direction.

I would like to begin my remarks by quoting from remarks prepared by then-MDOC director Kenneth McGinnis for a conference of the State Bar Criminal Law Section in June 1993. Director McGinnis said:

“Unless steps are taken immediately to significantly slow the number of people being sentenced to prison, we will literally run out of prison beds by the end of next year. In fact, by late fall of '94, based on our most current population projection, we'll have 38,782 prisoners in a system operating with 38,370 beds.

... Michigan has the highest incarceration rate of any northern industrial state. Corrections' share of the overall state budget has gone from a mere three percent in 1978 – to nine percent in 1990 – to 14 percent in the proposed FY '94 budget.

Michigan too frequently uses the most expensive form of punishment for offenders...the criminal justice system continues to send people to prison who could safely and more economically be handled in the community.

In addition, proposals are pending that could exacerbate our population problem, including the so-called “truth in sentencing” legislation and additional mandatory minimums.

...we in Corrections are actively supporting efforts to create a State Sentencing Commission which would take the capacity of the prison system into account when setting sentencing guidelines... the sentencing commission concept could be the best long-term solution to our prison population.”

Sound like déjà vu all over again? All we have to do is update the figures. Now we're at 51,500 prisoners and running out of beds. Now the MDOC budget is about to top \$2 billion and consumes more than 20 percent of General Fund spending. Our incarceration rate is still substantially above that of other states in the region. Many of our annual commitments are still non-violent offenders with short minimum sentences.

So what have we done in the last 13 years to increase the prison population by 13,000 people?

- Well, we did establish a sentencing commission, but then we eliminated it so we have no mechanism for routinely monitoring the impact of sentencing guidelines and making needed adjustments.
- We adopted “truth in sentencing”, which was projected to require 5,400 additional beds by 2007, and it has had exactly the impact that Mr. McGinnis feared.
- We established a new parole board that drastically decreased parole grant rates, so that today about 16,000 people who have served their minimum terms and are eligible for parole are piled up at the back doors of our prisons just marking time while they await release.
- We adopted parole guidelines that are supposed to guide the board's exercise of discretion, but we eliminated appeals of parole decisions by prisoners so the guidelines go unenforced.
- We continue to return thousands of people to prison for violating the conditions of their parole supervision, sometimes for a very long time for violations that pose no apparent risk to the community.
- We send thousands of people who are mentally ill to prison because we do not have adequate treatment resources in the mental health system.

We have also done some very positive things. Although there is still some clean-up to do, we fundamentally changed our drug laws and eliminated the harshest mandatory minimum sentences. We established very successful drug courts in many communities. And, of course, the MDOC is working very hard to help more people succeed on parole through the Michigan Prisoner Re-entry Initiative.

Nonetheless, the “get tough” measures have clearly overwhelmed the positive ones, so far. We need to take the challenge that the budget crisis has created and use it as an opportunity to engage in comprehensive, long-range criminal justice planning. Obviously, we need to take some steps very quickly, like the Governor's proposal to expedite the release of five thousand people who are past their earliest release dates. But we also need to examine the practices of states with lower incarceration rates than ours and build a cohesive strategy for keeping Michigan's prison system only as large as it needs to be for public safety.

Attached to my written testimony is a document that illustrates what a strategy like this might include. In 2002, the American Bar Association adopted a *Blueprint for Cost-effective Pretrial Detention, Sentencing and Corrections Systems* that included many carefully researched general principles. That

Blueprint incorporates the basic concept that prison should be treated as a scarce resource and that offenders should be kept in or returned to the community to the full extent that public safety allows.

The Prisons and Corrections Section of the State Bar of Michigan built on the ABA's model and developed a Michigan-specific blueprint that covers a wide range of issues. These very thoughtful proposals were prepared by people from diverse backgrounds with a lot of criminal justice and corrections experience. I strongly encourage you to consider them.

More specifically, I would like to make a number of recommendations that we feel should get the highest priority, in addition to the changes in sentencing guidelines and the funding for MPRI that the Governor has requested.

We strongly support restoration of the Sentencing Commission so that we can ensure on an ongoing, consistent basis that our sentencing policies are proportional, fair, data-driven and cost-effective; that is, that they do not result in more incarceration than is necessary for public safety.

We strongly support restoration of the Legislative Corrections Ombudsman's Office. That relatively small investment would, among other things, help to ensure that hundreds of millions of dollars are spent effectively on medical and mental health care for prisoners, instead of on expensive litigation.

We strongly support the development of mental health courts and the investment of needed resources in community mental health treatment so that the epidemic of incarcerating the mentally ill in state prisons and county jails, also described in our handouts, can be reversed.

Finally, there are several additional strategies that could result in sustained savings of as much as \$230 million and 8,000 beds, depending on how they interacted. These strategies all involve pulling back from policies that have fueled prison growth, without any proven impact on public safety, and returning to practices considered normal during the 1990s. None require the early release of any prisoner, much less anyone who is currently dangerous. They are summarized in the handout called "Six Strategies for Right-Sizing Michigan's Prison Population", but I would like to touch on them briefly. Also please note that our handout includes a number of prisoner profiles. I'm not going to go into the details of those cases but I will identify which ones illustrate specific proposals.

- First, we recommend the **enforcement of parole guidelines** to increase paroles of low-risk offenders who have completed their minimum terms.

By statute, prisoners who score "high probability of release" on the parole guidelines, which indicates they are a low risk for re-offending, must be paroled unless the board has "substantial and compelling reasons" not to grant release.

The parole board's grant rate in high probability cases has steadily declined. In 1996, the board paroled 81% of people in that category. In 2006, the rate was 53%. The cutoff point for determining who falls into the high probability range was also changed, decreasing the pool of high probability cases.

Much of the problem is that there is no mechanism for enforcing the "substantial and compelling" standard. In part because the parole grant rate has dropped and the same people get reviewed and

denied repeatedly, board members have become increasingly overburdened. They conduct 25 interviews a day, generally without reviewing the prisoner's file in advance. They depend heavily on brief summaries in forms that give little insight into an individual's history and character. Naturally concerned about being responsible for releasing someone dangerous, it is easiest to err on the side of denying release. The process leads to cases like Aldo Gallina's and Micah Mayhew's.

We have a number of recommendations for how the parole guidelines can be improved and enforced in our attached handout called, not very imaginatively, CAPPS Recommendations for Improving and Enforcing Parole Guidelines. There is also an article on the subject in the newsletter that I've given you. The bottom line is that statutorily required guidelines must be enforced not only at the sentencing stage but at the release stage as well.

If the cutoff point for entry into the high probability range and the former parole grant rate for these prisoners were both restored, 4,626 beds could be saved at a net cost savings (after parole supervision) of more than \$114 million.

- Second, we recommend that you reinstate **disciplinary credits** in conformity with national norms so that prisoners with good institutional conduct can earn modest amounts.

"Truth in sentencing," which was adopted in 1998, did two things. It prohibited what had been a highly successful community residential program for prisoners nearing parole. It also prospectively eliminated all time off for good behavior, known as disciplinary credit, so that no matter how well they are doing, prisoners cannot earn even a modest reduction of their sentences.

Although popular with prosecutors and victims, the total elimination of disciplinary credits was an extreme and costly measure that put Michigan out of sync with virtually the entire country. Michigan had reined in very generous awards of "good time" in 1978, long before most other states. By 1998, we already met the federal standard of requiring violent offenders to serve 85% of their sentences. Awarding modest amounts of disciplinary credit makes someone eligible for parole sooner, but it does not require that they be released. And, by definition, credit is only awarded to people whose behavior warrants it.

If the average Michigan sentence of 7.7 years were reduced to 6.4 years and 3,000 people who earned the maximum amount of disciplinary credits were released when they first became eligible, the net savings (after parole supervision) would be nearly \$100 million.

- Third, we propose limiting the length of prison returns for **technical parole violators** with no new criminal conduct to one year or less.

The population includes nearly 3,700 technical parole violators – people who have violated the conditions of their supervision. Some, like Chris Murzin, Harvey Reese and Estevan Gonzales, are kept for two, three, even five years for non-criminal behavior.

The MDOC notes that many technical violators actually engaged in criminal conduct that was not prosecuted. **Even if just 1,000 technical violators were limited to serving 12 months, the savings would be \$13 million. If returns were limited to six months, the savings would be \$26 million.**

- Finally, we recommend that the parole board be required to apply the “lifer law” as intended when more than 800 **parole-eligible lifers** were sentenced.

The current board has changed the treatment of people sentenced to life terms for crimes other than first-degree murder who became eligible for parole after serving 10 years. It has decided that “life means life” and releases very few. Of the 800-1,000 parole-eligible lifers, many have served decades longer than their sentencing judges intended.

Most parole-eligible lifers are middle-aged, have excellent institutional records and pose very low risk to the community. Many were first offenders. They are increasingly expensive to house as they age and develop medical problems. Among them are people like Ross Hayes and Derek Foster.

Paroling 500 lifers would save (after supervision costs) more than \$15 million a year.

There is a margin of diminishing returns in just keeping people locked up for more and more years. Michigan is well beyond that margin now. We urge you to pull back to the more moderate practices that used to be the norm. If we reduce our prisoner population to what it was in 1996, we would still have 42,000 people in prison and our incarceration rate would still be higher than that of our Great Lakes neighbors. But at least we would have a few hundred million dollars more to spend on badly needed services that will help reduce crime in the future.

Thank you.

[Notice having been given, the Prisons and Corrections Section Council adopted this position statement on February 1, 2003 by a vote of 11-0-1. The views expressed are those of the Section and do not necessarily represent the views of the State Bar of Michigan.]

A BLUEPRINT FOR COST-EFFECTIVE CRIMINAL JUSTICE IN MICHIGAN

Modeled on the

ABA Blueprint for Cost-effective Pretrial Detention,
Sentencing, and Corrections Systems

**PREPARED BY:
PRISONS AND CORRECTIONS SECTION,
STATE BAR OF MICHIGAN**

ADOPTED FEBRUARY 2003

Fiscal Accountability

1. Michigan should require the Michigan Sentencing Commission (see Proposal 4) to prepare fiscal and prison/jail bed space impact statements before any legislation is enacted that would create a new criminal offense, change the number of persons subject to a particular criminal sanction, or change the potential sentence length for any criminal offense.

Sentencing and Community Corrections

2. Michigan should create a separate state Department of Community Corrections and Supervision that combines the current functions of the Office of Community Corrections, the parole board, probation supervision and parole supervision. The purpose of the new department would be to promote, manage and fund community-based supervision of adult offenders, to conduct research and training, to coordinate the services necessary for offenders to remain in the community successfully, and to secure and administer grants to local service providers. To insure knowledgeable assessments of prisoners' institutional records when making release decisions, at least 50 percent of parole board members should have significant experience working in a state adult correctional facility. The Department of Corrections would continue to operate prisons. The two departments would work cooperatively regarding community programs for prisoners who have not yet been paroled and pre-release planning.

This separation of functions and the award of department status to community-based oversight of offenders would help insure adequate recognition and funding of community-based supervision. It would also help insure that prisons are treated as a scarce resource and incarceration is treated as a last alternative. And, since incarceration and community supervision involve inherently different skills, knowledge, and objectives, it would allow each department to focus its resources exclusively on its primary mission.

3. Michigan community corrections programs should avoid unnecessary supervision and incarceration, in part by expanding the use of means-based fines, so long as adequate community service opportunities are available to those who are unable to pay.
4. Michigan should establish a sentencing commission with representatives from the prosecution, defense, judiciary, law enforcement, victims' advocates, corrections, community corrections, mental health, substance abuse treatment, and the general public. Legislators, who will ultimately vote on the commission's work product, should not be members of the commission.

The commission should be charged with developing sentencing and parole guidelines that accomplish the following objectives: (a) provide that a community-based sanction is the presumptively appropriate penalty for persons who do not present a substantial danger to the community; and (b) ensure that the populations subject to the jurisdiction's prison, jail or community-sanctioning systems do not exceed each system's rated capacity. In order to accomplish these objectives, the commission should:

- a. Bear primary responsibility for developing and revising sentencing guidelines for all felony offenses, with the Legislature limited to adopting or rejecting the commission's recommendations.
- b. Recommend to the Legislature sentencing guidelines for judges to follow when imposing sentence after revoking a sentence of probation.
- c. Recommend to the Legislature parole guidelines that:
 - i. are coordinated with sentencing guidelines,
 - ii. prevent the parole board from denying parole based solely on the same factors the trial court considered in selecting the minimum sentence,
 - iii. presume release after service of the minimum absent a poor institutional record or objective factors indicating the prisoner is a current threat to public safety, and
 - iv. apply to parolable lifers.
- d. Recommend to the Legislature separate parole guidelines for technical parole violators that account for the nature of the technical violations and the fact that the minimum punishment for the underlying crime has been served.

5. Michigan should review the length of sentences prescribed by law, and sentencing and parole guidelines, to ensure that they accurately reflect current funding priorities, as well as research findings that question the utility of long sentences, whether incarcerative or community-based, for certain kinds of crimes. To accomplish these objectives, the Legislature should:
 - a. Provide the Sentencing Commission with adequate research staff to annually collect and analyze data on the impact of drug courts and other community-based programs, the imposition and revocation of probation, sentencing guidelines, truth in sentencing, and parole guidelines on the length of time served, recidivism rates, and the capacity of state and local correctional facilities and community-sanctioning systems and services.
 - b. Amend current truth in sentencing requirements to reflect national norms regarding the award of disciplinary credits:
 - i. Require violent offenders to serve at least 85% of their minimum sentences
 - ii. Establish credit amounts for non-violent offenders after reviewing the average amount awarded to such prisoners nationally
 - c. Establish a special panel to review in-depth the cases of all prisoners who have served at least 15 years of a parolable term, or 25 years of a mandatory life sentence for first-degree murder, and recommend whether parole or commutation, as appropriate, should be granted. The panel shall consist of the following five members: one former judge, two corrections professionals, and two mental health professionals. Panel recommendations shall be acted upon by the parole board in special executive sessions consisting of the five panel members and five regular parole board members assigned to the special sessions on a rotating basis. Legislation establishing the special panel should be subject to a three-year sunset provision.
6. Michigan should repeal mandatory minimum sentencing laws that unduly limit a judge's discretion to individualize sentences, so that the sentence in each case fairly reflects the gravity of the offense and the degree of culpability of the offender.
7. Michigan should expand the use of drug courts and the availability of comprehensive substance abuse treatment programs, in lieu of incarceration.
8. Michigan prosecutors should regularly examine their policies concerning charging, plea-bargaining, and sentence recommendations, in order to avoid overcharging, and to make greater use of community-based sanctions.

Sentence Modifications

9. The Michigan Department of Community Corrections and Supervision should develop graduated community-based sanctions for non-criminal violations of probation and parole. It should utilize imprisonment for such violations only as a last resort.
10. Michigan should establish a mechanism to apply sentencing reforms, where appropriate, to currently incarcerated inmates.
11. Michigan should require the MDOC Bureau of Health Care Services to prepare a quarterly report to the parole board with information about prisoners who are terminally ill, chronically physically ill or incapacitated, or over age 65. The parole board should then be required to review each prisoner's circumstances to determine whether the prisoner presents a threat of violent behavior and is otherwise a suitable candidate for a recommendation of commutation. The Bureau's report and the parole board's decisions shall be provided to the Office of the Legislative Corrections Ombudsman who shall recommend changes needed to improve the review process and who may recommend the reconsideration of any individual parole board decisions.

Reentry and the Reduction of Recidivism

12. Michigan should adopt a comprehensive plan to reduce return rates to prison and jail that includes the development of reentry plans, procedures, and services to facilitate released inmates' reintegration into the community, and relief from legal obstacles that impede reintegration. Aspects of this plan should include the following:
 - a. Develop cost-effective transition programs for re-entering prisoners, whether on parole or discharging from their maximum sentences.
 - b. Aggressively pursue all available public and private funding for innovative community-based supervision methods and community services needed to decrease recidivism, including drug, re-entry and mental health courts, day reporting centers, substance abuse and mental health treatment, medical care, job training and placement, higher education, parenting classes, and family counseling.
 - c. Reduce the caseloads of probation and parole officers, and define their roles as enabling their clients' successful integration into the community, not merely monitoring compliance with the conditions of supervision.

13. Michigan should implement and fully fund programs within prisons and jails, and within community-based sanctioning programs, to provide educational opportunities, vocational and job training, mental health and substance abuse treatment, counseling, and other programs designed to reduce recidivism.

To avoid extending incarceration longer than necessary, Michigan should:

- a. Require the MDOC to provide prisoners with the opportunity to complete all required programs, such as adult basic education and GED testing, substance abuse treatment, sex offender treatment, and assaultive offender treatment, before their first parole eligibility date and should prohibit the denial of parole based on the prisoner's inability to complete an unavailable program.
- b. Require the MDOC to compile data and publish a report regarding prisoner program completion and the reasons for non-completion, including the number of people who did not complete required programs before their earliest release dates because: 1) they voluntarily opted out, 2) programs were not available at the institutions where they were housed, or 3) their participation in programs was disrupted by transfers to different institutions or returns to court.
- c. Require the MDOC to conduct research on the relationship between program completion and 1) release on parole and 2) recidivism.

Allocation of Jail Space

14. In order to reduce unnecessary detention and save jail space for persons who need to be incarcerated, Michigan should call upon the State Court Administrative Office to sponsor a task force on pretrial services, jail bed space, and the possible establishment of regional facilities, that includes representatives from the Michigan Judges Association, Michigan District Judges Association, the Michigan Sheriffs Association, the Prosecuting Attorneys Association of Michigan and the Criminal Defense Attorneys of Michigan.

Correctional Operations and Facilities

15. In light of the MDOC's share of the general fund budget and the impact of its operations on prisoners and staff, the Legislature should increase the resources and expertise of the Auditor General for conducting fiscal and program audits of the MDOC to independently determine the effectiveness of programs, appropriateness of security classifications, and compliance with statutes, rules and professional standards.

The Department of Community Corrections and Supervision should compile data on the results of community-based supervision programs, and should require grants and contracts with private vendors to include financial incentives for successful outcomes and financial disincentives for unsuccessful outcomes.

16. Michigan should establish a criminal justice coordinating council to engage in the following activities: undertake long range criminal justice planning; recommend resource allocation; facilitate data sharing among existing agencies; commission research; apply for federal and private grants; develop strategic partnerships with colleges & universities, other state agencies, professional organizations and community groups.

The membership of the council should include: the directors of the State Court Administrative Office, Michigan Department of Corrections, Michigan Department of Community Corrections and Supervision, Michigan State Police, Family Independence Agency, and the Office of Drug Control Policy; representatives from the Michigan Judges Association, Prosecuting Attorneys Association of Michigan, Criminal Defense Attorneys of Michigan, Michigan Association of Community Corrections Boards, Michigan Sheriffs Association, Michigan Association of Chiefs of Police; the Legislative Corrections Ombudsman, the Prisons and Corrections Section of the State Bar, the Collaborative on Juvenile Justice Reform, the Citizens Alliances on Prisons and Public Spending; a mental health professional; a substance abuse treatment professional; a victim's advocate, a prisoner advocate, an academician with expertise in criminal justice, and an ex-offender.

17. Michigan should amend current truth in sentencing requirements to permit low security prisoners to participate in community residential programs before reaching their earliest release dates.
18. Michigan correctional officials should establish linkages with universities, colleges, and community colleges through which research and service learning can be better utilized to reduce correctional costs.
19. The decision to close correctional facilities for budgetary reasons should be subject to the following requirements: (a) the selection of the facilities to be closed should be informed by and based on input from correctional officials regarding which facility (or facilities) it would be most advisable to close from a fiscal and correctional-management perspective; (b) the closing of a correctional facility should not result in the transfer of inmates to any facility already operating at or above its rated capacity; and (c) the selection of the facilities to be closed should take into account the desirability of permitting appropriate visitation by family members, in order to facilitate inmates' eventual reintegration into the community.

Six Strategies for Right-sizing Michigan's Prison Population

At a time of massive budget shortfalls, Michigan spends \$1.9 billion annually on corrections. Policymakers and opinion leaders are looking at the state's corrections budget to determine what savings can be derived while ensuring public safety. They recognize that:

- The state's incarceration rate of 489 prisoners/100,000 residents far exceeds that of Illinois (351), Indiana (388), Minnesota (180), New York (326), Ohio (400), Pennsylvania (340) and Wisconsin (380). There is no apparent relationship between incarceration rates and public safety. If Michigan's rate was the average of its Great Lakes neighbors (338), it could save up to \$500 million.
- Michigan's prisoner population is at an all-time high of 51,500 and still growing. It increased by more than 2,000 in 2006.

If the population were reduced to the 1996 level of 42,000, the incarceration rate would be roughly 421. While this would still be higher than comparable states, it would allow for a savings of \$236 million.

This goal could be achieved through a combination of strategies. • Some are longer-term and some are more immediate. • Some require legislative action and some do not. • All have Michigan precedents. • None involve the early release of dangerous offenders.

1. Enforce **parole guidelines** to increase paroles of low-risk offenders who have completed their minimum terms.

People who score high probability of release on the MDOC's parole guidelines present a very low risk of re-offending. By statute, they are supposed to be paroled absent a "substantial and compelling reason."

The parole board's grant rate in high probability cases has steadily declined. In 1996, the grant rate was 81%. In 2006 it was 53%. The cutoff point for determining who falls into the high probability range was also changed, decreasing the pool of high probability cases. The cutoff used to be a 6.5 % statistical risk of committing a new assaultive offense, but now it is a 4.3% risk.

If the cutoff point for entry into the high probability range and the former parole grant rate for these prisoners were both restored, 4,626 beds could be saved at a net cost savings (after parole supervision) of more than \$114 million.

2. Fully implement the **Michigan Prisoner Re-Entry Initiative**.

People returning to the community face the stigma of being a former prisoner, legal barriers to housing and employment, and many of the same problems they had before they went to prison, including substance abuse and mental health issues. Effective assistance in overcoming these challenges so that fewer people return to prison will require substantial ongoing investments in programs and services both during incarceration and after release.

3. Reinstate **disciplinary credits** in conformity with national norms so that prisoners with good institutional conduct can earn modest amounts.

Michigan reined in very generous awards of “good time” long before most other states. In 1998, when it eliminated disciplinary credits altogether, Michigan already met the federal standard of requiring violent offenders to serve 85% of their sentences. Varying amounts of credit for good conduct are still awarded in most states. By definition, credit is only awarded to people whose behavior warrants it. There is no reason to believe restoring modest amounts would affect public safety.

If the average Michigan sentence of 7.7 years were reduced to 6.4 years and 3,000 people who earned the maximum amount of disciplinary credits were released when they first became eligible, the net savings (after parole supervision) would be nearly \$100 million.

4. Limit prison returns for **technical parole violators** with no new criminal conduct to one year or less.

The population includes more than 3,600 technical parole violators. 2003 research showed they serve, on average, about 24 months before being re-paroled. While this number has declined, the average appears to still be at least 18 months. It used to be 10 months in Michigan, and it is as low as six in many states.

The MDOC notes that many technical violators actually engaged in criminal conduct that was not prosecuted. Even if just 1,000 technical violators were limited to serving 12 months, the savings would be \$13 million. If returns were limited to six months, the savings would be \$26 million.

5. Apply the “lifer law” as intended when more than 800 **parole-eligible lifers** were sentenced.

People sentenced to life terms before October 1992 for offenses other than first-degree murder became eligible for parole after serving 10 years. Many have now served 25 years or more. The current parole board says “life means life”. The board only reviews these lifers every five years, often without even seeing them in person.

Most parole-eligible lifers are middle-aged, have excellent institutional records and pose very low risk to the community. Many were first offenders. They are increasingly expensive to house as they age and develop medical problems. Paroling 500 lifers would save (after supervision costs) more than \$15 million a year.

6. Reassess the impact of **sentencing guidelines** to ensure that drug and property offenders are not incarcerated unnecessarily and that sentences for crimes against persons are proportionate to the offense.

When the sentencing guidelines were adopted, the statute required the sentencing commission to periodically review their operation. With the abolition of that commission, no systematic assessments occur. In cases where judges can choose either prison or a community-based alternative, they choose prison twice as often as had been anticipated. Savings would depend on how the guidelines were adjusted.

CAPPS Recommendations for Improving and Enforcing Parole Guidelines

The best way to maximize public safety and public dollars is to release prisoners who have served their time and pose little risk to the community. CAPPS' recommendations for making parole decisions fairer, more cost-effective and more transparent will help ensure that only those people who actually pose a continuing threat to the public are incarcerated after they have served their minimum terms.

1. Clarify that the purpose of the parole guidelines is to assist the board in making parole decisions that implement the intent of the sentencing judge and the parties to negotiated guilty pleas, to the extent consistent with public safety.
2. Require the guidelines to:
 - a. provide for public protection
 - b. reflect a prisoner's actual current risk for reoffending
 - c. encourage positive institutional conduct and participation in prison programs
 - d. avoid the use of secure prison beds by people who can reasonably be managed in the community.
3. Apply the guidelines to all prisoners eligible for parole.
4. Validate the statistical relationship to the risk of re-offending of:
 - a. the offense for which the person is incarcerated
 - b. the person's age
 - c. the person's prior criminal record
 - d. other relevant factors that predict re-offense risk.
5. Require the guidelines to also address the person's:
 - a. institutional program performance
 - b. institutional conduct
 - c. length of time served
 - d. mental health
 - e. physical health
 - f. previous experience with probation or parole
 - g. available community support.
6. Prohibit basing departures from the guidelines on factors already accounted for by the sentencing or parole guidelines unless the board finds from facts in the record that the factor has been given inadequate or disproportionate weight.
7. Record parole board interviews conducted with people whose guidelines scores indicate a high probability of parole.
8. Permit prisoners, including those eligible for parole under the lifer law, to appeal denials of parole by leave to the sentencing court only on the following grounds:
 - a. the board departed from the parole guidelines without substantial and compelling reasons
 - b. the denial resulted from a material mistake in the parole guidelines scoring
 - c. the denial resulted from reliance on inaccurate or incomplete information.
9. Notify prisoners denied parole of the scope of their right to appeal and any applicable deadlines.
10. Prohibit continuances of prisoners with high probability of parole under the guidelines for longer than 12 months.



CITIZENS ALLIANCE ON PRISONS AND PUBLIC SPENDING

Enforce Parole Guidelines – Reduce Corrections Spending

Citizens Alliance on Prisons and Public Spending
June 2006

Michigan residents pay much more per capita on prisons than do the residents of Indiana, Illinois, Minnesota, New York, Ohio, Pennsylvania and Wisconsin because of Michigan's higher rate of incarceration. As the prestigious **Citizens Research Council of Michigan** explains:

Compared with the average of those states' incarceration rates, Michigan's rate is over 40 percent higher. The higher rate results from longer stays in prison for a given crime than in neighboring states and the more extensive use of alternative forms of incarceration and supervision for some crimes in the states other than Michigan. The relationship between the higher incarceration rate and crimes rates is not apparent... If Michigan had an incarceration rate equal to the average of these seven neighbors, General Fund spending for corrections programs in the Michigan budget might be reduced by as much as \$500 million – more than 5 percent of total General Fund spending.¹

Our high incarceration rate is due, in part, to a failure of current parole guidelines to adequately guide parole board decisions.

Corrections spending drains scarce resources from other services.

- At \$1.8 billion, the MDOC accounts for 20 percent of all general fund spending. Its share of GF dollars has quadrupled in the last 20 years. Despite our need for a better-educated workforce, we now spend more on prisons than we do on universities.
- Prison spending has grown because the prisoner population increased from 15,000 in 1984 to nearly 50,000 today.
- As long as we keep the prison population this large, there is little more the MDOC can cut. Prisons are already double-bunked; non-custodial staff has been reduced; rehabilitative programs, already a small fraction of the budget, have been cut.
- A 2004 EPIC-MRA poll shows that Michigan citizens would much rather fund K-12 education, public health, revenue sharing, higher education and the environment.

Prison growth stems from policy choices, not crime rates.

- Crime rates fluctuate for many reasons, ranging from the size of the young male population and the state of the economy to changes in the drug trade.
- Prison growth reflects sentencing and release policies – how many people enter prison and how long they stay.

¹ Citizens Research Council of Michigan, *State Budget Notes: Michigan's Budget Crisis and the Prospects for the Future*, www.crcmich.org (March 2006), p. 3,

- Changes in parole have caused the single largest share of the population increase.
 - After the parole board was changed in 1992 from corrections professionals to political appointees, parole rates plunged from 68 percent to 48 percent. Parole decisions alone added 9,000 prisoners to the system from 1992 to 2000.
 - Although parole grants have crept back up slightly, in 2003, 17,000 prisoners (more than one-third of the total) were past their first release dates.

Unlike sentencing guidelines, parole guidelines are not effective

How long a person stays in prison depends on two decisions. The judge's sentence determines how much time must be served before the person is eligible for release. The parole board determines when the person will actually be released.

Judicial discretion is constrained by sentencing guidelines. The parole board's discretion, although governed by parole guidelines in theory, is unconstrained in fact.

How sentencing guidelines work

- Enacted by the Legislature, the guidelines dictate the range within which the judge must elect the minimum sentence.
- The guidelines apply to all cases except those, like first-degree murder and felony-firearm, where the statute mandates a specific sentence.
- The Legislature designed the guidelines to protect the public, ensure that sentences are proportional to the offense and offender, reduce disparities and control prison growth.
- The judge can depart from the guidelines only for "substantial and compelling reasons" which must be "objective and verifiable." A body of appellate decisions has developed that defines when departures are permissible.
- If the judge departs from the guidelines, either the prosecutor or the defendant can appeal to a higher court. They can also appeal guidelines scoring errors or reliance on inaccurate information.

How parole guidelines (don't) work

- Developed by the MDOC, the guidelines are treated by the parole board as purely advisory.
- The board denies release to more than one-third of all parole-eligible prisoners who score high probability of release – roughly 2,500 a year – for as long as 24 months.
- Many people with high probability scores have excellent prison records and have successfully completed available programs but are still viewed by the board as a risk for unclear reasons. Some are continued for a year or two, then released, with no apparent gain to public safety from the extra time served.
- The board routinely denies parole based on its own view of the offense, effectively engaging in resentencing, or on subjective assessments of the person's risk based on 10-minute interviews that are not recorded.
- The board has decided to simply not apply the guidelines to more than 800 parolable lifers, many of whom would be likely to score in the high probability range.
- Although the board is required to state "substantial and compelling reasons" for denying parole to someone who scores high probability for release, the standard cannot be enforced because prisoners cannot appeal board decisions.

Why parole guidelines should be revised and enforced

- Although the parole board's decisions affect tens of thousands of prisoners and cost taxpayers hundreds of millions of dollars, they are not subject to a review process that ensures accountability. The decisions of political appointees about how long a person will be incarcerated should be as transparent and reviewable as comparable decisions made by elected judges.
- The Legislature directed the adoption of parole guidelines at the same time the composition of the board was changed. Because parole board members are appointees who are expected to be sensitive to the potential political consequences of their decisions, the guidelines were intended to serve as objective external constraints on their discretion.
- When the guidelines were adopted, prisoners had a right to appeal parole denials. Statutory amendments in 1999 that eliminated that right left the parole guidelines essentially unenforceable.
- Without judicial review, there is no means of correcting unfair results in individual cases or interpreting the "substantial and compelling standard" for departures or developing a body of law to govern parole board decision-making.
- Research shows that statistical risk assessment instruments are far more accurate than the "gut reactions" of individual parole board members in predicting whether people will re-offend.
- The current guidelines mix factors that do and do not predict risk and should be revalidated. While risk is not the only issue to be considered, the board should have a statistically valid risk assessment available before deciding whether to deny release for some other reason.

Enforcing parole guidelines is a feasible way to control prison spending.

- Improving and enforcing the parole guidelines would not result in any particular prisoners being immediately released but would increase parole grant rates over time.
- Limiting the grounds for appeal to those permitted by the sentencing guidelines will limit the possible number of parole appeals and avoid frivolous claims. As a body of law develops, board decisions will conform and fewer appeals will occur.
- Although many people being denied release committed assaultive or sex offenses, their high parole guidelines scores should not be dismissed without review. The nature of the offense was already factored into their sentences by the sentencing guidelines and the trial judges; it is also scored in the parole guidelines. Moreover, the MDOC's own data shows that these offenders actually have lower re-offense rates for their original crimes and for crimes generally than do other offenders.
- Under current administrative rules, people in the high probability of release group pose less than a five percent risk of committing a new assaultive offense.
- Poll results show that the overwhelming majority of Michigan citizens want parole decisions to be fair and subject to review.

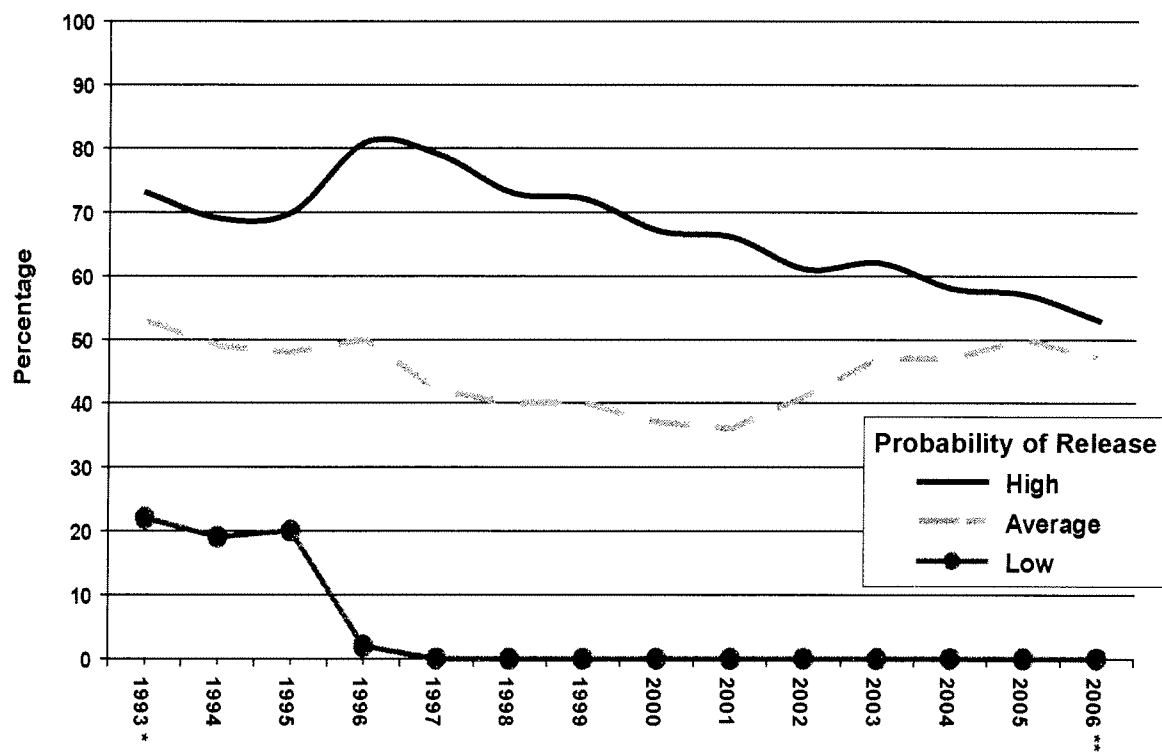


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Total Board Votes to Grant Parole, by Parole Guidelines Score ‡



‡ The number of board votes does not equal the number of parole decisions. Except for parolable lifers, parole decisions are made by the votes of two board members, unless a third is needed to break a tie. Parole guidelines scores are not calculated for parolable lifers.

* Includes Nov. - Dec. 1992

** Covers Jan. - Oct. 2006

"An epidemic of mentally ill in Michigan's prisons and jails"

Michigan currently spends \$1.9 billion on the Department of Corrections, 20% of the total General Fund budget. If more were spent on the causes of incarceration, including the treatment of mentally ill juveniles and adults, less would be needed for prisons.

- As the President's New Freedom Commission on Mental Health¹ noted in 2003: "Too often, the criminal justice system unnecessarily becomes a primary source for mental health care."
- The Michigan Mental Health Commission² reached a similar conclusion in 2004: "There is inappropriate use of the juvenile and criminal justice systems for people with mental illness and emotional disturbance...There are too many adults in the jail and prison system and too many children in the juvenile justice system who should be served and supported by the mental health system."
- Mark Reinstein, president and CEO of the Mental Health Association of Michigan, observes that the community mental health system in Michigan is so overburdened and underfunded that it has created "an epidemic" of mentally ill inmates in the state's prisons and jails.

The Michigan commission also found: "Children are grossly underserved by the public mental health system, although evidence shows that treatment is most effective and the possibility for full recovery is greatest when problems are addressed at the earliest stage of illness."

The federal commission observed: "Cost studies suggest that taxpayers can save money by placing people into mental health and substance abuse treatment programs instead of in jails and prisons...Many non-violent offenders with mental illnesses could be diverted to more appropriate and typically less expensive supervised community care."

About CAPPs

The Citizens Alliance on Prisons and Public Spending, a non-profit public policy organization, is concerned about the social and economic costs of prison expansion. Because policy choices, not crime rates, have caused our prison population to explode, CAPPs advocates re-examining those policies and shifting our resources to public services that prevent crime, rehabilitate offenders, and address the needs of all our citizens in a cost-effective manner.

To achieve these goals, CAPPs develops data-driven proposals for reducing the prison population while ensuring public safety. It informs policymakers, advocacy groups, affected communities and the general public about these issues through a newsletter, a website, research reports, legislative testimony, speaking appearances and the distribution of information kits to legislators and the media.

Michigan taxpayers understand that the solution to crime is prevention. Polling data confirms they would rather invest in keeping lives on track than spend money on punishment after lives have been derailed. CAPPs urges that more be spent on mental health services and less on unneeded prisons.

1. President's New Freedom Commission on Mental Health, Achieving the Promise: Transforming Mental Health Care in America (July, 2003) [<http://www.mentalhealthcommission.gov/>]

2. Michigan Mental Health Commission Part I: Final Report (Oct. 15, 2004) [<http://www.michigan.gov/mentalhealth/0,1607,7-201-98116-,00.html>]



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Facts on Incarceration and Mental Illness

The closure of state psychiatric hospitals and the expansion of the state prison system are directly related.

- In 1960, Michigan had 19,000 residents confined to state hospitals and 9,600 in state prisons.
- In 2007, there were about 600 people in state-run psychiatric hospitals and nearly 52,000 in state prisons.

Nationally, 56% of state prisoners and 64% of local jail inmates have mental health problems.

- The Michigan Department of Corrections reports that 24% of Michigan prisoners have a history of mental illness.

From 65-70% of youth involved with the juvenile justice system meet the criteria for a diagnosable mental health disorder.

Mentally ill inmates often have a host of related problems.

- They are more likely to have experienced homelessness, physical or sexual abuse and foster care.
- They are much more likely to abuse alcohol or drugs.

Mental health problems are especially high for female inmates.

Prisons are designed for custody, not mental health treatment. Because their judgment and self-control may be impaired, mentally ill prisoners are more likely to be punished for rule infractions. They too often end up in segregation units, sometimes with tragic consequences.

- It is not unusual to find severely decompensated prisoners locked in isolation units who repeatedly smear themselves and their cells with their own feces, experience hallucinations, assault staff, and/or inflict major physical injuries on themselves.

Mentally ill prisoners are granted parole less often than other people who have committed similar types of crimes.

When they are released, mentally ill former prisoners have a very difficult time finding housing, employment and the treatment services they need to re-enter the community successfully, so the cycle of suffering and, too often, re-incarceration, begins again.



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Faces behind the Figures

Are we safer because they're behind bars?

Aldo Gallina, No. 205962

Crimes: Murder, 2nd degree & felony firearm

Sentences: 15-30 yrs +2 yrs

First Possible Release: Oct. 15, 2005



Aldo Gallina, left, at 15 when he committed the crime. Today, he is 33.



Aldo Gallina, who has no prior offenses and spent two years attending community college while on bond pending appeal, has a fine institutional record, an excellent therapy report and unshakable family support. While his co-defendant, with a similar history, was released in 2005, Gallina has been denied parole for a second time.

On July 2, 1989, when Aldo Gallina was 15, he was out riding in Dearborn with other teenagers. They became involved in a confrontation with boys in another car that ended with the shooting death of 15-year-old Charles Schramek. While Gallina and his 16-year-old co-defendant, Eric Rode, both admitted firing the gun that Gallina pulled from the glove compartment, each denied having fired the fatal shot. The prosecution charged Gallina as an aider and abettor on the theory that Rode was the shooter. Gallina and Rode were tried together as adults and convicted of second-degree murder. Both were sentenced to serve 15-30 years in prison, plus an additional two for felony firearm.

Gallina, the second of six children, was raised in a stable, supportive family environment. He was an average student who played junior varsity football and had no juvenile record or discipline problems. The presentence investigator described him as "somewhat mild-mannered" and "soft-spoken."

During the lengthy appeal process, Gallina and Rode both spent two years on bond in the community. Gallina lived with his family, worked full-time, and earned 33 credits with a major in Fire Science Technology at Henry Ford Community College. He was under no court supervision and had no police contact.

Gallina has also done well in prison, earning good work reports and few misconduct citations;

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his last "ticket" was in 1997 for being out of place. He served on work crews in the community and resides in a minimum-security prison camp. His family has visited him every two weeks throughout his incarceration, even while he was in a Virginia prison during a period of extreme prison overcrowding in Michigan.

Gallina was unable to gain entry into required assaultive offender therapy until August 2005, just two months before he completed his minimum sentence. Because Gallina scores "high probability for parole" on the parole board's own guidelines, indicating he is a low risk for re-offending, the board must give "substantial and compelling reasons" for not releasing him. In September 2005, when it continued him for a year, it said:

Although P[risoner] has done well at work, programs & behavior & expresses remorse, he needs to complete the Assaultive Offender Therapy he is just beginning. P needs to gain greater insight into his behavior/understanding & empathy re the harm he has caused

Gallina completed the therapy, known as AOT, in June 2006. The therapist wrote: "He displayed full and complete acceptance of responsibility for his criminal behavior with significant evidence of remorse and empathy." The therapist characterized Gallina's support plan as "formidable" and found "significant evidence of the internalization of change." He said that Gallina's relapse prevention plan demonstrates "an outline/map for success." Gallina wrote to his family:

I worked very hard the last 44 weeks and it shows in this report...I did everything I could do, so no matter what, I can say that.

In October 2006, the parole board continued Gallina for a second year. It gave as its substantial and compelling reason:

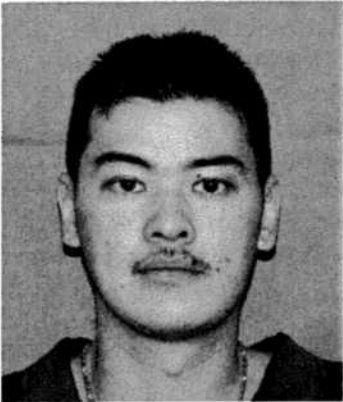
Despite completion of recommended therapy, the Parole Board is not assured that his risk of re-offending has been diminished. Prisoner is deemed an unwarranted risk to public safety. Unwilling to parole at this time.

Gallina, now 33, and his family were stunned. Eric Rode, who had been able to complete AOT on time, had been paroled when he first became eligible in November 2005. Ironically, the board's notes regarding Rode are equally true of Gallina: good family support, good AOT, limited prior record, excellent staff and work reports, in community for two years on bond pending appeal, good parole plans, crime out of character, spent more than half his life in prison, has matured much in last 16 years.

Gallina's next parole re-consideration date will be in October 2007, about the same time Eric Rode will discharge from parole supervision.

Faces behind the Figures

Are we safer because they're behind bars?



Micah Mayhew, No. 254686

Crimes: *Involuntary manslaughter & felonious driving (3 cts)*

Sentences: *7-15 years for manslaughter & 1yr 4mos on each count of felonious driving*

First Possible Release: *Dec. 12, 2001*

Although Micah Mayhew was only 17 at the time of his offense in 1995, has successfully completed all recommended programming, has been in camp since 1998 and has strong family support, the parole board continued him in prison for five and one-half years beyond his minimum sentence.

Micah Mayhew had always been an honor student while pursuing many interests outside of school, but during his junior year, when he began using marijuana, he lost interest in his classes and was sometimes truant. While still a juvenile, he was arrested for possession of marijuana, delivery of cocaine, and retail fraud. In August 1995, after receiving two speeding tickets during his probationary driving period, his license was suspended. Mayhew worked that summer to pay his tickets and received a clearance, but never attended his reinstatement hearing.

On Nov. 14, 1995, Mayhew took his car for an oil change. The attendant informed him that the bolts holding the sway bar in place were missing, and he cautioned Mayhew not to drive fast or turn suddenly or he could lose control of his vehicle. Mayhew next stopped at the auto repair shop of the local vocational school. He left there with a list of parts he needed. Rushing to get the needed parts and still get his three friends to class on time, Mayhew was traveling well in excess of the speed limit and weaving in and out of traffic. He passed one school bus and swung out to pass another when his vehicle fishtailed out of control and struck an oncoming car. Another car hit his, and flying debris struck a third vehicle.

Mayhew and four others were seriously injured. James Case, a 56-year-old grandfather, died two days later of his injuries. On the way to the hospital, EMS personnel found a packet of marijuana on Mayhew. He was charged with second-degree murder, three counts of felonious driving, possession of marijuana and driving on a suspended license. Mayhew pled guilty to the latter two charges. A jury convicted him of involuntary manslaughter and three counts of felonious driving.

Mayhew's sentencing guidelines called for a minimum sentence between four and ten years. The judge followed the prosecutor's recommendation, sentencing Mayhew to 7 - 15 years for the offense of involuntary manslaughter and 1 year 3 months for each count of felonious driving. Since all the sentences run concurrently, Mayhew was eligible for parole in December 2001.

After spending a year at the Michigan Reformatory while he completed his GED, Mayhew was transferred to the camp system, where he's been for the last eight years. He's worked on public

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works crews near Grayling and at the community center in Coldwater where he served meals to senior citizens. Mayhew completed a building trades program in 1998, as well as NA/AA and other substance abuse programming. Studying lessons sent to him by his grandfather, he became an accomplished artist. Mayhew has painted murals on several walls at Camp Branch and plans a career in commercial art after prison.

Mayhew did so well in prison that he was approved to enter the Community Residential Program in September 2001. This program would have allowed him to reside in a halfway house until he was paroled. However, after Oakland County Prosecutor David Gorcyca filed a formal objection, the department changed its decision. It then said that Mayhew's community placement would "undermine public confidence." Notably, Mayhew's victim was the brother of an Oakland County Assistant Prosecutor.

Also in 2001, the parole board continued Mayhew in prison for an additional year. Every year since, his parole interview has resulted in one more year in prison, with the board stating each time that Mayhew "minimizes his actions" which led to the accident.

In both 2004 and 2005, because Mayhew scored high probability of parole on the board's own guidelines, the board was required to give a substantial and compelling reason for denying him parole.

In 2004, the board wrote:

Prisoner continues to minimize his actions and does not take full responsibility for his actions, which resulted in an accident causing death.

In 2005, it said:

The Parole Board is not assured that P's risk of re-offending has been diminished. Prisoner is deemed an unwarranted risk to public safety. Unwilling to parole at this time.

Mayhew later wrote:

My interview was four minutes long. I was asked one question that gave me a chance to speak...First thing I said was how I took full responsibility and a little of how I felt and I was cut off and told I'd hear something in four to five weeks. I walked out so fast my head was spinning.

In September 2006, the board determined that "reasonable assurance exists that the prisoner will not become a menace to society or to the public safety." However, instead of releasing him within the customary 30 days, the board delayed his release for six months until June 2007.

Board notes indicate that Mayhew recognizes the value of good behavior, follows rules and direction, interacts well with staff and other prisoners, has completed all recommended programming, has a supportive family and suitable arrangements for work. The purpose of the additional six months is unclear.

Mayhew will serve 13 months on parole. He will complete his maximum 15-year sentence in July 2008.

Faces behind the Figures

Are we safer because they're behind bars?



Christopher Murzin, No. 246250

Crime: Criminal Sexual Conduct, 3rd Degree

Sentence: 6 months – 15 years

First Possible Parole: March 27, 1996

Paroled: March 23, 2000

Parole Revoked: Dec. 5, 2001

After completing 21 months of a 24-month parole, Christopher Murzin was returned to prison for having a pornographic magazine in his possession. In August 2006, the board continued his incarceration for a sixth year for this technical violation of a parole condition.

Christopher Murzin was diagnosed as developmentally disabled in kindergarten and spent his school years in programs for special students until he dropped out in 10th grade. He had trouble keeping a job because employers said he worked too slowly; he received disability payments from Social Security. At age 24, he still lived at home with his parents. He had no criminal record, adult or juvenile, and no substance abuse or mental health problems.

In February 1995, at the home of a mutual acquaintance, Murzin had sex with a woman he had known from school. She was 26, but had the mental capacity of a 6 - 9 year old. The victim said she told Murzin "no," but that he led her to a bedroom and had intercourse with her anyway.

Following a bench trial, Murzin was found guilty of third-degree criminal sexual conduct. Based on a recommendation by the Recorder's Court Psychiatric Clinic, the judge initially sentenced Murzin to five years probation so that he could participate in a program set up by the Wayne County Association for the Retarded. The judge stated his belief that "the program the Clinic has outlined...given this defendant's mental capacity...is superior to incarcerating him at this time." However, one month later Murzin was re-sentenced because the CSC statute mandates a prison term. The judge imposed a term of 6 months to 15 years – below the sentencing guidelines which called for a minimum term between one and four years.

In prison, Murzin completed several programs, including 46 weeks of Sex Offender Therapy. Although the therapist reported that Murzin made only marginal progress in treatment, at least partially due to his mental impairments, he concluded that Murzin would likely be at minimal risk of re-offending if given appropriate community supervision and follow-up therapy.

After Murzin had served 4½ years, the parole board finally placed him on parole for 24 months in March 2000. Murzin reported to his agent as required and participated in group therapy. He ultimately had his own apartment and did odd jobs for his landlord. Although Murzin had some difficulties meeting all the conditions of his supervision and, at one point, was placed on tether, there were never any allegations of sexual misconduct.

In December 2001, after 21 months on parole, Murzin was charged with violating several parole

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conditions when a police officer saw him in front of his home talking with another parolee who had stopped by to get insurance information regarding a traffic accident. The woman had a 13-year-old girl with her. When the officer entered Murzin's home, he found a pornographic magazine.

At his violation hearing in February, Murzin was found guilty only of "possessing sexually stimulating material" – the magazine. The hearing officer recommended re-parole in April, but the parole board decided the violation showed "inappropriate judgement, which in combination with the background of the offender supports return to prison."

The board reviewed Murzin again in 2002, and in 2003, 2004, 2005. Each time, it continued his incarceration for an additional year, citing his crime and his "parole failure."

In 2006, the board continued Murzin for yet another year, using this 'substantial and compelling reason':

P[risoner]'s minimization of his conduct while on parole is indicative of a lack of insight and a lack of determination to lead a crime-free life and not re-offend. P is still considered a risk to the general public safety.

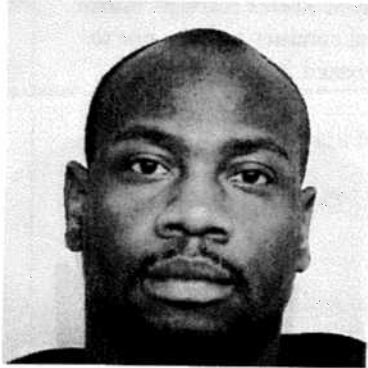
By his next re-consideration date in December 2007, Murzin will have served six years for the parole violation of possessing a pornographic magazine. Altogether, on an initial minimum sentence of six months, he will have served 10½ years.



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Faces behind the Figures

Are we safer because they're behind bars?



Harvey Reese, Jr. No. 232149

Offense: Attempted Criminal Sexual Conduct, 3rd degree

Sentence: 1½ - 5 years

Paroled: November 2002

Parole Revoked: January 2004

Although there is no indication whatsoever that he would molest a child, Reese's parole on a conviction for having sex with a 15-year-old girl was revoked because he gave a ride to his cousin and her sons ages 11, 14 and 16.

When he was 24, Harvey Reese, Jr. became sexually involved with a 15-year-old girl. He was convicted of attempted 3rd degree criminal sexual conduct and sentenced to 1½ - 5 years. He was paroled in November 2002, after serving 3 ½ years. Reese's prior record consisted only of low-level drug crimes committed when he was a teenager. He had previously served almost five years on a 3 - 20-year sentence for delivery of less than 50 grams of cocaine.

Because of his sex offender status, Reese had 24 parole conditions that he said "made everything hard." A prohibition against his having any contact with children 16 or younger prevented him from visiting or even talking on the phone with his own three-year-old son. Reese was also barred from seeing his 11-year-old brother, who lived with their father across the street from Reese's own residence. More broadly, the prohibition kept him from re-connecting normally with his family and taking advantage of the support they could offer him, since all his brothers, sisters and cousins had children. The difficulty was compounded because Reese lived with his grandmother, and young grandchildren visited frequently.

Nevertheless, except for the near impossibility of avoiding all contact with children, Reese did well on parole for over 13 months. Within two weeks, he obtained contract employment with General Motors in Lansing and regularly complied with his responsibilities to report to his parole agent and pay his fees. As required, he completed sex-offender group therapy through the year-long VOICES program. The therapist concluded: *His prognosis not to re-offend is good.*

Reese maintained a stable residence, and remained crime and drug-free. He liked his job and felt good that he was being productive and staying off the streets. Reese says, "This was the first time in my life I have done well...I really had it set in my heart to do right."

On Jan. 11, 2004, 14 months into his parole, Reese stopped at McDonald's in Delta Township on his way home from work. As he was leaving, his cousin, who was seven months pregnant, exited the restaurant and asked him for a ride. Not realizing that her children were with her, Reese agreed to take her home. As she was getting in the car, her three sons, ages 11, 14 and 16, came out of the restaurant and got in the back seat.

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Minutes later, an Ingham County Sheriff's officer noticed an air freshener dangling from Reese's rearview mirror and stopped him. A LIEN check revealed that Reese was on parole for criminal sexual conduct and was not to have contact with any child age 16 or under. Because of the three boys, the officer arrested Reese.

The MDOC arraigned Reese on the parole violation. The examiner who interviewed him wrote:

Parolee certainly does not present as a predator. His adjustment was going very well. This incident appears to have gotten his full attention. Release after impact is recommended.

Without talking with Reese, the parole board ignored the examiner's recommendation and continued Reese in prison for 12 months on the grounds that "The violation shows the offender cannot be managed in the community," and "The violation is illustrative of risk to the community."

Reese has been housed in a minimum-security facility, has almost completed his GED, and has had no misconduct citations since his return to prison. Nonetheless, in November 2004, the board continued Reese's imprisonment until January 2006. In its decision, it cited the nature of his original offense - sexual contact with a minor - even though Reese had been paroled on that offense once already and had never been accused of repeating it. The board recommended that he involve himself in Sex Offender Therapy (SOT), even though he had completed a similar program while on parole.

By the time of Reese's 2005 parole hearing, he had not yet been admitted to SOT. Still, the board member who interviewed him voted for parole saying:

P has gained insight into his behavior. Has good attitude and wants to be successful on parole. Worked his way up to be a team leader at work. Willing to give another chance. Completed sex offender therapy while on parole.

Two other members, however, who simply reviewed Reese's file, voted to continue him in prison - this time for 18 months, citing his criminal history and parole failures.

In January 2006, two years after he was returned to prison, Reese began sex offender therapy for the second time. His next reconsideration date is in July 2007. By then he will have served 3½ years for giving a ride to his cousin and her three sons.

Faces behind the Figures

Are we safer because they're behind bars?



Estevan Gonzales, No. 175601

Crime: Second-degree murder

Sentence: 12 - 30 years

First Possible Release: September 1993

Paroled: June 2004

Parole Revoked: March 2005

Paroled to a strange city with practically no resources, Estevan Gonzales became homeless, living in a shelter at night and walking the streets by day. This made it hard for him to report on time and to attend outpatient substance abuse treatment. When he became so overwhelmed that he left to join his family in Ohio, the parole board returned him to prison for 18 months, then continued him for an additional year.

When Estevan Gonzales was paroled in June 2004 after serving 21 years for second-degree murder, approval for the transfer of his parole supervision to Toledo, Ohio, where he had family, had not yet come through. He was placed in Detroit with an acquaintance but lost this housing when it was discovered that a probationer on electronic monitoring also lived there.

Gonzales' parole agent said she was not able to help him find another place to live or provide him with a loan. His family paid for a motel room for him for a couple of weeks until they could no longer afford it.

Describing his situation, Gonzales wrote:

What needs to be understood is that I just did 21 years and was on parole here in Michigan without NO FAMILY, NO JOB, NO PLACE TO LIVE, NO MONEY OR ANY HELP FROM MY PAROLE OFFICER. My family had to come from Toledo to take me to ALL MY APPOINTMENTS.

After testing positive for marijuana, Gonzales was placed in a residential treatment program for 30 days. He hoped that by the time he completed the program the interstate transfer would be approved so he could go to live with his sister. That did not happen and he was homeless again. He stayed in shelters at night and walked the streets between 8 am and 6 pm. He was also required to complete outpatient substance abuse programming.

In October 2004, Gonzales was late for a scheduled meeting with his parole agent. By the time he got there, she had already left the office. Gonzales signed in but, fearing he would be returned to prison for missing his appointment, left for Toledo to stay with his family. Ironically, his transfer to Ohio had just been approved, but he left the state without learning of it. Gonzales was apprehended in March 2005 and turned over to the parole board for failure to report, failure to complete outpatient substance abuse treatment and leaving the state without permission.

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Although the administrative law examiner who presided over Gonzales' parole revocation hearing recommended re-parole to Toledo, in April 2005 the Board returned him to prison for 18 months. It said the violations showed he couldn't be managed in the community. In 2006, the board continued Gonzales for an additional year, stating:

P [prisoner] failed community supervision and resumed drug use. Minimized his actions and offered excuses for his parole failure. . .

Gonzales had gone to prison in 1983, at age 24. Although he had no prior criminal record, he did have a serious drinking problem. Convicted of the beating death of an acquaintance, Gonzales said he had been drinking heavily and didn't recall any details of the fatal assault. He was sentenced to 12 to 30 years.

Gonzales did not adjust well to prison and had numerous misconduct citations. The parole board continued him seven times, including three 24-month continuances, requiring him to serve almost twice his minimum sentence.

Ultimately, through programming and his work as a tutor, Gonzales says he learned to deal with uncomfortable situations, control his temper and improve his communication skills. An instructor said of him: *He is very knowledgeable, articulate and studious. He has a serious demeanor and a great desire to learn and to help others.* By 2004, his conduct had improved markedly, he scored favorably on the parole guidelines, and the board granted his release.

After being returned to prison, Gonzales wrote:

I know if I had been paroled to Ohio to my family...I would not be here today, or if I would have had a little help from someone here in Michigan with transportation and a real place to stay, I could have made it until I could have been transferred to Ohio. I was so scared out there I really did not know what to do. I had no one to turn to but my family, so I went home to them.

Gonzales' reconsideration date is in September 2007.

Faces behind the Figures

Are we safer because they're behind bars?



Ross Hayes (right) with his friend, Dale Daverman, great-nephew of the victim.

Ross S. Hayes, No. 140420
Crime: Second-degree murder
Sentence: Parolable Life
Parole eligible since 1984

Age 16 at the time he killed an elderly woman during a burglary, Hayes now counts the victim's nephew among his strongest supporters.

In 1974, Ross Hayes was an upcoming basketball star and a marginal ninth grade student at Ottawa Hills High School. While under the influence of LSD, marijuana, and alcohol, Hayes, age 16, and his 14-year-old cousin entered the Grand Rapids home of 89-year-old Katherine Thomas, looking for cash. When Thomas surprised them by returning home during the burglary, Hayes stabbed her once in the chest with a kitchen knife, killing her. He was arrested the next day.

Although Hayes had twice been referred to the juvenile court for breaking and entering, neither incident had resulted in a formal finding of guilt. As a result, he had never participated in any programs in the juvenile system – then one of the considerations for a juvenile waiver. The examining psychologist stated:

He has the mentality of an adolescent and he has the emotional disturbance of an adolescent. This young man is in need of a psychological treatment program and my recommendation would be that he receive treatment in the Pine Rest Adolescent Unit.

Nevertheless, the probate judge waived Hayes to adult court partly because “the time [needed for] treatment may well exceed the relatively short period remaining for juvenile jurisdiction.” He called his decision to have Hayes stand trial as an adult “the most difficult one in some seven years on the bench,” but said he was confident that the circuit judge would handle the case “with fairness, equity, mercy and justice.” On the advice of his attorney, Hayes pled guilty to second degree murder, believing that with a parolable life sentence he could be released after 10 years.

In prison, Hayes earned his GED and two associates degrees. He completed group therapy and substance abuse treatment. His work and living unit reports are excellent. In 1988, Hayes and another prisoner, Delmar Quezada, made a videotape in which they talk directly to young people about the consequences of criminal behavior. The video has been used in schools and juvenile facilities in several states. Hayes became a committed Christian in 1989. In 1998 he married Shirley Wright.

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More about the men and women who fill Michigan's prisons

Since 1981, parole board members who interviewed Hayes have noted his positive attitude, his many accomplishments, and the support he has from staff, volunteers and the community. In a 1987 report to the board, his treatment team supervisor wrote:

[I am] very favorably impressed with the degree of [Hayes'] personal growth...and it would seem that now is the optimum time to release.

However, the interviewing board member said: "no interest now, but maybe next time." Positive recommendations from interviews in subsequent years and numerous letters of support still resulted in routine "no interest" notices.

Meanwhile, Dale Daverman, Katherine Thomas' great-nephew, was surprised to learn through a family friend that Hayes was still in prison and began corresponding with him. Following a three-hour visit with Hayes in the spring of 2001, he wrote to the parole board chair:

I am absolutely convinced that Ross Hayes is sincere and has remorse for what he did . . . my father, brother and I feel Ross has paid his debt to society.

Daverman envisions a partnership in ministry with Hayes and has advocated strongly for his release.

In 2001, after meeting with Daverman, Kent County Prosecutor William Forsyth wrote to parole board chair Stephen Marschke:

During my 27 years as a prosecutor, I have never [before] been asked to help facilitate the release of a convicted murderer by the family of the victim.

Forsyth expressed surprise that the board had not taken interest in a potential release and urged the board to interview Hayes before his routinely-scheduled interview in 2004. Marschke replied that nothing in Hayes' file or the prosecutor's letter persuaded him to accelerate the review.

On July 8, 2004, parole board member Margie McNutt interviewed Hayes at length. Dale Daverman traveled from his home in Gallup, New Mexico to be there. Nonetheless, Hayes, who has now served 32 years, did not obtain the majority board vote needed to proceed to public hearing. After a 5-5 decision, he was notified that he will be reconsidered in 2009.

Derek Lee Foster, 156952
Parole eligible since 1989

Despite lavish praise from staff for his tutoring and counseling efforts with younger prisoners and a near-perfect institutional record for 28 years, in January 2007 Foster was given another five-year continuance by the parole board without even an interview.

Derek Foster was the older of two sons in a working-class Detroit family. He left school in the 10th grade, then held several factory jobs. He married at age 20; he and his wife separated after having one child. He had no juvenile court history, no adult convictions and no substance abuse problem.

Despite this unremarkable history, in December 1978, when Foster was 23, he and an 18-year-old co-defendant decided to rob a gas station. Foster held a gun on the woman attendant. When she struggled with him, he shot and killed her.



Derek Foster and granddaughter

one week and wanted to buy Christmas presents for his daughters. "I had family I could have turned to, but my messed up sense of pride would not allow it. I hate the decision I made," he wrote in a letter discussing the offense.

Foster and his co-defendant both pled guilty to second-degree murder. The co-defendant received

a 15 to 25 year sentence and was paroled after serving about 7½.

Foster has focused his prison time on academic and counseling activities geared particularly at younger prisoners. He obtained his GED the year after he entered prison. By 1985, he had completed an associate's and a bachelor's degree.

For the last 17 years, Foster has tutored in the school program during the day and volunteered as a literacy tutor evenings and weekends. Teachers have praised his patience and persistence with low-level learners. One wrote in 1995:

He has been a great asset to our classroom and has made remarkable progress in reading with many of our 'last chance' adult students. These special talents and his willingness to work hard with these students have made him a special person in our school.

Another teacher wrote in 1997:

I have observed Mr. Foster's patience with irritable, sluggish students — especially young students who are lacking motivation. Mr. Foster has been a positive model for these young students to look up to and to imitate.

In 2002, a third wrote:

My students . . . are fortunate to have such a role model, whose conduct, manner and educational knowledge are all exemplary . . . When released from prison, he should have a bright professional future.

The school principal wrote that Foster "would make an excellent elementary school teacher or could have a career in social work." Foster would like to earn a master's degree in special education. For more than a decade at Carson City Correctional Facility, Foster has helped to facilitate group counseling sessions in his housing unit. The staff member who supervised those sessions recently wrote of him:

No Way Out: Michigan's parole board redefines the meaning of "life"

He has the ability to relate and communicate with many different types of personalities . . . He displays excellent leadership qualities in a group setting without appearing to dominate or limit group involvement. His topics of discussion are rooted in the core values of a moral society.

In the early 1980s, the parole board gave Foster a "grid score" of 14 years, indicating an expectation that he would serve about that long. He has not received a misconduct citation since 1981. His sentencing judge, Hon. Dalton Roberson, wrote

I have no objection to the parole board exercising any discretion they might wish to use to reward your excellent conduct.

A psychological evaluation requested by the parole board in 1997 concluded:

. . . this individual is highly motivated to re-adjust in society and given his increased education and demonstrated commitment to be productive, prognosis for his re-adjustment in the community would be above average.

Despite Foster's record, the parole board has shown no interest in releasing him. When, in 1993, Foster sought guidance from the board about how he could earn parole, then chairperson Gary Gabry replied:

The only thing a lifer can do is establish a record of stable and mature behavior, clear of misconduct, and participate in the institutional programming and activities which are available.

Although Foster continues to exceed this standard, the board continues to have no interest. He received five-year denials after interviews in 1997 and 2002. In 2007, the board didn't even choose to interview him; it simply send him a "no interest" notice with his next consideration date penned in: 3-24-2012. Foster will be 56 years old and have served 33 years in prison.

Correcting Michigan's Priorities



More prevention,
fewer prisons



CAPPS
CITIZENS ALLIANCE ON
PRISONS & PUBLIC SPENDING

*CAPPS is a non-profit public policy organization that
advocates shifting resources now spent on excessive
incarceration to services that prevent crime and
rehabilitate offenders.*

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My tax deductible contribution, payable to "CAPPS," is enclosed. My membership category is:

- () Prisoner — \$10 () Student — \$10 () Friend (individual/family) — \$25 () Supporter — \$50
() Partner (individual/organization) — \$100 () Patron — \$250 () Benefactor — \$500

Name: _____ Title: _____

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The Citizens Alliance on Prisons and Public Spending, a non-profit public policy organization, is concerned about Michigan's excessive use of punitive strategies rather than preventive ones to deal with crime and its impact on our quality of life. Because policy choices, not crime rates, have caused our prison population to explode, CAPPS advocates re-examining those policies and shifting our resources to services that prevent crime, rehabilitate offenders and address the needs of all our citizens in a cost-effective manner.

To achieve these goals, CAPPS develops data-driven proposals for reducing the prison population while ensuring public safety. It informs policymakers, advocacy groups, affected communities and the general public about these issues through numerous means, including a website, a newsletter, research reports, legislative testimony, speaking appearances and the distribution of information kits to policymakers and the media.

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"... we know it's much wiser to invest taxpayer dollars educating people on the front-end of life, rather than incarcerating them on the back-end."

--Governor Jennifer M. Granholm,
Feb. 6, 2007

The solution is prevention

- Decrease child abuse and neglect through prenatal care, parenting support and appropriate intervention.
- Invest in education for all children, from preschool through college.
- Provide support and guidance to teens leaving foster care and work intensively with juvenile offenders.
- Ensure adequate support for families leaving welfare.
- Help people dependent on alcohol and drugs lead productive lives.
- Provide needed services and support to the mentally ill.
- Implement effective programs to prepare prisoners for release and assist them as they reenter our communities.

Right-Sizing Michigan's Prison Population

Michigan's incarceration rate of 489 prisoners/100,000 residents far exceeds that of Illinois (351), Indiana (388), Minnesota (180), New York (326), Ohio (400), Pennsylvania (340) and Wisconsin (380).

Michigan's rate is higher because it sends more people to prison and keeps them longer for comparable offenses. If the prisoner population were reduced to the 1996 level of 42,000, the incarceration rate would still be roughly 421.

"The relationship between the higher incarceration rate and crime rates is not apparent...If Michigan had an incarceration rate equal to the average of those seven neighbors, General Fund spending for corrections programs in the Michigan budget might be reduced by as much as \$500 million – more than 5 percent of total General Fund spending."

Tom Clay, Director of State Affairs, Citizens Research Council of Michigan

Prison growth: Not Required for Public Safety

Michigan's prison population has grown from under 15,000 to nearly 51,500 since 1984. Prison expansion is the product of sentencing and release policies that often have more to do with being "tough on crime" than with actually controlling it. For instance:

- One-third of prisoners are serving for drug or other non-assaultive offenses, such as retail fraud or drunk driving.
- Thousands of people are incarcerated for non-criminal conduct that violated the terms of probation or parole.
- After the parole board was changed in 1992 from corrections professionals to political appointees, parole rates plunged, even for low-risk offenders. In 2006, 16,000 people were past their first parole eligibility dates. There is no evidence that it reduces crime to warehouse people with good institutional records who have served their minimum terms.
- Our truth-in-sentencing law, far more punitive than the national norm, has lengthened sentences unnecessarily. It forbids any "time off" for good behavior or program participation. It also prevents low-risk prisoners from gradually re-entering the community under strict supervision before they are paroled.
- More than 800 people who are eligible for parole on life terms for crimes other than first-degree murder are being denied release because the parole board changed its policies decades after people were sentenced.

"Since only about 5.5 percent of all parolees commit violent crime while on parole and are returned to prison, locking everyone up for longer periods is not a cost-effective way of dealing with repeat crime."

Kenneth L. McGinnis, Director, Michigan Dept. of Corrections, 1992-1998

Prisons Drain Scarce Resources

With critical state services facing drastic cuts, too much money is spent on prisons that could fund programs for children and the elderly, support higher education and cultural institutions, protect the environment, and pay fire fighters and police.

- For 2008, the proposed MDOC budget exceeds \$2 billion, even with a projected reduction in the prisoner population. Every day, taxpayers spend more than \$4.7 million to operate dozens of prisons and camps. The average annual cost per prisoner is more than \$32,000.
- The MDOC's share of General Fund spending was five percent in 1983; now it is more than 20 percent.
- Despite the need for a well-educated work force to revitalize its economy, Michigan pays as much for prisons as it does for colleges and universities.
- Far too often, we incarcerate people with mental illness or substance abuse problems instead of treating them.

"We need to reserve prison space for criminals we're afraid of and use more conducive and less costly alternatives to rehabilitate offenders we are simply mad at."

Robert Brown, Jr., Director, Michigan Dept. of Corrections, 1984-1992

What Should We Do?

1. Enforce parole guidelines to increase paroles of low-risk offenders who have completed their minimum terms.
2. Reinstate disciplinary credits in conformity with national norms so that prisoners with good institutional conduct can earn modest amounts.
3. Reassess the impact of sentencing guidelines to ensure that drug and property offenders are not incarcerated unnecessarily and that sentences for crimes against persons are proportionate to the offense.
4. Ensure that parole conditions are reasonably necessary and limit prison returns for technical parole violators with no new criminal conduct to one year or less.
5. Fully implement the Michigan Prisoner Re-Entry Initiative
6. Apply the "lifer law" as intended when more than 800 parole-eligible lifers were sentenced.
7. Develop clear procedures for allowing the parole board to grant medical paroles to prisoners who are physically or mentally incapacitated.

"If the states around us with similar crime rates can operate with fewer people in prison, then why can't we?"

Perry Johnson, Director, Michigan Dept. of Corrections, 1972-1984

Addressing the social and economic costs of prison expansion

Everyone's talking about:

Right-sizing Michigan's Prison Population

The \$1.9 billion Michigan spends on corrections is getting plenty of attention these days as the state faces deficits totaling more than \$3 billion. An \$850 million shortfall in the current fiscal year alone is leading legislators, civic leaders and editorial writers to question why Michigan's incarceration rate (the number of prisoners per 100,000 residents) is so out of sync with the rates of other states.

According to Dec. 2005 U.S. Justice Department figures, Michigan's rate of 489 is much higher than that of the other Great Lakes states: Illinois – 351 Indiana – 388 Minnesota – 180 New York – 326 Ohio – 400 Pennsylvania – 340 Wisconsin – 380.

Tom Clay, Director of State Affairs for the influential Citizens Research Council of Michigan, explains:

"Compared with the average of those states' incarceration rates, Michigan's rate is over 40 percent higher. The higher rate results from

longer stays in prison for a given crime than in neighboring states and the more extensive use of alternative forms of incarceration and supervision for some crime in the states other than Michigan. The relationship between the higher incarceration rate and crime rates is not apparent . . . If Michigan had an incarceration rate equal to the average of these seven neighbors, General Fund spending for corrections programs in the Michigan budget might be reduced by as much as \$500 million -- more than 5 percent of total General Fund spending."

Instead, Michigan has the 11th highest rate in the country, behind only Louisiana, Texas, Mississippi, Oklahoma, Alabama, Georgia, Missouri, South Carolina, Arizona and Florida.

And things are getting worse. Michigan added 2,077 people in 2006 for an all-time high of 51,570 prisoners. (See Michigan prisons bulging at page 8).

If Michigan reduced its population to 42,000, the size in 1996, its incarceration rate would be roughly 421 – still higher than the other Great Lakes states. The state could then close 8-9 minimum to medium security facilities at a savings of more than \$236 million.

Michigan opinion leaders are getting the message. At a recent town hall meeting sponsored by the Center for Michigan and Michigan State University, 250 civic and business leaders were asked where the state budget could be cut. They responded that corrections should be reduced by \$100 to \$500 million. And their views are shared by many others.

What's Inside

- **CAPPS says improve, enforce parole guidelines. Page 4**
- **'Michigan Prisons Bulging.' Page 8**
- **Legislators address CAPPS members. Page 11**
- **Michigan children hit hard in dismal economy. Page 10**

(Continued on the next page)



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Right-sizing Michigan's Prison Population

(Continued from page 1)

- "Why is it that Michigan, compared to other states, puts more people in prison for longer periods of time for no difference in crime rates or recidivism?" Rich Studley, vice president, Michigan Chamber of Commerce, *Gongiver*, Dec. 21, 2006.
- "Begin the conversation on fixing the corrections system. We continue to incarcerate a larger share of our population than surrounding states, at great cost to families and to the taxpayer. The system needs to be fixed for both financial and human reasons." Patrick Anderson, CEO, Anderson Economic Group, *Detroit Free Press*, Jan. 18, 2007.
- "Incarceration rates here are among the highest in the nation at a time when the state is strapped for cash. And Michigan's prison population, now a record 51,044, is on the rise again, increasing 3% so far this year. The state added nearly 1,700 additional inmates in the first 10 months of 2006.

"Before Michigan's prison costs balloon beyond \$1.9 billion a year, before the state considers opening two more prisons, at a cost of \$35 million to \$40 million apiece, lawmakers must find ways to stop that growth, which is easily attainable without compromising public safety. Every dollar spent on corrections takes resources from health care, higher education, roads and other vital services." *Detroit Free Press* editorial, Dec. 10, 2006.
- "Why hasn't (Gov. Granholm) done something to contain the exploding cost of the prison system? No one wants to release dangerous criminals, but not all inmates fall into that category. Why hasn't she ordered a comprehensive review?" *Detroit News* editorial, Dec. 24, 2006.
- "We have been focused on the punitive side of corrections for a number of years. In the process, we've forgotten about the rehabilitation side. And, in many cases, by incarcerating as many people as we have and by going with some of the mandatory guidelines in sentencing, we've put ourselves in an awful position. As time goes on, we will re-evaluate those sentencing guidelines." Senate Majority Leader Mike Bishop, addressing Lansing Economic Club, as reported by *MIRS*, Jan. 24, 2007.

● "Michigan no longer can afford to ignore the costs - budgetary and human - of its prison policies. What Michigan has done lately is pretty simple: Lock people up for as long as possible. No doubt that has prevented some crimes by repeat offenders. But this policy is imposing huge costs on the state, costs that are hurting Michigan.

"Out of the state's major general fund accounts, only Corrections offers any real possibility for significant savings to fund investments elsewhere - and only if Granholm and the Legislature move beyond the politics of "imprisonment first and last." *Lansing State Journal* editorial, Dec. 19, 2006.

The Department of Corrections agrees that a re-examination of current policies is needed. A Jan. 20, 2007 *Associated Press* article quotes MDOC spokesperson Russ Marlan: "We're definitely going in the wrong direction. We're not seeing communities that are much safer. What are we getting for (higher spending)? That's what we need to look at. Maybe we need to be a little smarter on crime."

And in a Jan. 24, 2007 article in *MIRS*, Marlan pointed to the unanticipated consequences of sentencing guidelines and the return to prison of parole violators as factors contributing to Michigan's high incarceration rate. Marlan echoed Tom Clay by noting, "If we had incarceration rates similar to other states we would be talking about \$500 million a year in savings."

Six ways to reduce Michigan's incarceration rate

1. Reassess the impact of sentencing guidelines to ensure that drug and property offenders are not incarcerated unnecessarily and that sentences for crimes against persons are proportionate to the offense.
2. Reinstate disciplinary credits in conformity with national norms so that prisoners with good institutional conduct can earn modest amounts.
3. Enforce parole guidelines to increase paroles of low-risk offenders who have completed their minimum terms.
4. Limit prison returns for technical parole violators with no new criminal conduct to one year or less.
5. Apply the "lifer law" as intended when more than 800 parole-eligible lifers were sentenced.
6. Fully implement the Michigan Prisoner Re-Entry Initiative.

To make release decisions more cost-effective, fair

CAPPS says improve, enforce parole guidelines

Thousands more low-risk prisoners could be released if parole guidelines were adjusted slightly and if the parole board was actually required to follow them. Overcrowding in the state's prisons could be reduced and tens of millions of dollars could be shifted from corrections to other urgently needed state services.

CAPPS has a series of proposals for improving and enforcing the parole guidelines. Executive Director Barbara Levine says, "The CAPPS proposals would simply require the board to use the guidelines as the legislature intended. They would not require the immediate release of any particular prisoner."

Parole guidelines divide prisoners who are eligible for parole into three categories – high, average and low probability of release – according to their statistical risk for re-offending. Those who score high probability for release must, by administrative rule, pose no more than a five percent chance of committing a new assaultive crime.

The statute creates a presumption that people scoring high probability will be released unless the parole board has "substantial and compelling reasons" to depart from the guidelines. However, the percentage of high probability cases in which parole is actually granted has been steadily declining. In 1996, the grant rate for this group was 81 percent; from Jan.-Oct. 2006, it was 53 percent.

How many beds and how much money could be saved by increasing the release rate for low-risk prisoners depends on two factors – where the breakpoint is set for determining who is in the high probability range and what proportion of those people actually get paroled. If the breakpoint was set at a 6.5 percent risk of re-offending and the parole grant rate for high probability individuals was 80 percent, CAPPS estimates more than 4,600 people now past their earliest release dates would be paroled at a savings of more than \$114 million.

If an additional 450 parolable lifers scored high probability and were released, the savings would increase by \$11 million.

The guidelines were mandated by statute in 1992, at the same time the parole board membership was changed from corrections professionals to political appointees. The intention was to make the parole guidelines work like the sentencing guidelines do, as objective constraints on the decision-maker's discretion.

Like the parole board, sentencing judges must state "substantial and compelling reasons" for

"Enforcing the parole guidelines could produce fairer results in individual cases, make a critical government process more transparent and accountable, and reduce corrections spending."

departing from their guidelines. However, judicial departures cannot be premised on factors that have already been adequately scored in the sentencing guidelines. And both prosecutors and defendants can appeal judicial departures to a higher court, as well as errors in the scoring process. Thus, unfair or inaccurate decisions in individual cases can be corrected and a body of law defining the "substantial and compelling standard" has evolved.

"Because the right for prisoners to appeal parole denials was abolished in 1999, there is no way to correct unfair results in individual cases or to interpret the 'substantial and compelling standard' for parole board departures," Levine explains.

Cooley Law School Professor Ron Bretz, president of the CAPPS board of directors, notes, "The current situation is pretty one-sided. Prosecutors and victims can appeal grants of parole, but prisoners cannot appeal parole denials."

Prisoner appeals were eliminated because the Attorney General's Office complained that it took \$330,000 a year and substantial staff time

to handle the cases. Few were actually successful. Under the CAPPS proposal, appeals would be restricted to three grounds: unjustified departure from the parole guidelines for people scoring high probability of release, errors in the guidelines scoring and misinformation in the prisoner's file. In the latter situations, the prisoners would be required to exhaust internal MDOC procedures before they could appeal.

CAPPS also proposes that, except for parolable lifers, continuances in high probability cases be limited to 12 months. Currently, they may be as long as 24 months. Combined with the narrow grounds for review and the fact that there is no right to appointed counsel, this limit on the length of parole "flops" would minimize the number of appeals.

CAPPS estimates that if there were as many as 400 appeals, the cost to the Attorney General's office would be \$180,000. "It would only take seven reversed parole board decisions, a success rate of merely 1.7 percent, for the state to offset that amount," Levine observes. "And once a body of law has been established, the number of appeals should drop."

The push to enforce parole guidelines is needed because the parole board denies release in about half the high probability cases, often based on its own view of the offense.

"Although the parole board's decisions affect tens of thousands of people and cost

taxpayers hundreds of millions of dollars, it is essentially unaccountable," Levine notes. "Enforcing the parole guidelines could produce fairer results in individual cases, make a critical government process more transparent and accountable and reduce corrections spending."

Many people with high probability scores have excellent prison records and have successfully completed available programs. Some are continued even though they have been working daily in the community or are subject to deportation or their

(Continued on page 6)

How the guidelines work

The Michigan Department of Correction developed parole guidelines in 1984 to "reduce the potential for disparity in parole decisions and to explicitly define the bases upon which rational and equitable parole release decisions should be made," according to an MDOC report. That is, they were initially conceived to make decisions more objective and consistent, not to statistically assess risk.

The ability of the instrument, as a whole, to predict an individual's risk of re-offending was validated in 1992, 1993 and 2001. However, the predictive value of each individual factor scored in the guidelines has not been established. That is, the instrument as a whole successfully separates prospective parolees into categories based on their likelihood of committing either an assaultive felony or any felony at all, but the actual impact of most specific factors is unclear.

All prisoners receive a parole guidelines score before they are considered for release except those serving parolable life sentences. (CAPPS recommends calculating scores for parolable lifers before their five-year reviews so that their actual risk for re-offending is taken into account.) The score is determined by counting the numbers, either positive or negative, assigned to variables in seven categories: offense, prior record, institutional program performance, institutional conduct, statistical risk, age and mental status.

MCL 791.233e(7) says, "The parole board may depart from the parole guidelines by denying parole to a prisoner who has a high probability of parole as determined under the parole guidelines or by granting parole to a prisoner who has a low probability of parole as determined under the parole guidelines. A departure under this subsection shall be for substantial and compelling reasons stated in writing."

People who score high probability of release can be paroled without an interview unless the crime involved a sexual offense or a death. Those who score low probability can be denied parole without an interview.

CAPPS says improve, enforce parole guidelines

(Continued from page 5)

codefendants have been paroled. The "substantial and compelling reason" given is often a board member's impression at a brief interview, such as, "Prisoner shows inadequate remorse." Since interviews are not recorded, the basis for this impression cannot be determined. CAPPS recommends that interviews of people with high probability scores be recorded.

Sometimes, in the face of overwhelmingly positive factors, the board's substantial and compelling reason is simply the assertion that the "prisoner is deemed to be an unwarranted risk to public safety," without reference to any specific facts. (See, for example, profile of Aldo Gallina on page 14.) Frequently, people are continued for a year or two and then paroled, with no apparent gain to public safety from the extra time served.

The parole board stresses that many people denied parole despite high probability scores committed assaultive or sexual offenses. However, Bretz

stresses, the issue is whether they are at risk for re-offending today. "Not only do these broad labels cover a wide variety of actual conduct, but the facts of the offense were taken into account when the judge set the minimum sentence. In many cases we are talking about first offenders who have served a lot of time and done well in prison," Bretz explains. "People who have been punished according to sentencing guidelines and pose a demonstrably low risk of re-offending should be paroled with appropriate conditions of supervision."

CAPPS suggests that the parole guidelines be structured so that individual factors are weighted according to their actual predictive value. This would inhibit the board from effectively resentencing someone in reaction to the crime when the person's likelihood of committing another offense is extremely low. "Research shows that statistical risk assessment instruments are more accurate than the 'gut reactions' of individual parole members in predicting whether people will re-offend," Levine says.

In Memoriam – Norris J. Thomas, Jr.

CAPPS lost a staunch supporter when Norris Thomas died on Jan. 12, 2007, after a brief illness, at the age of 63. Chief Deputy Defender at the State Appellate Defender Office (SADO), Norris was also a member of the original small group that founded CAPPS in the late 1990s. He spent his entire legal career, first as a legal aid attorney and then as counsel assigned to appeal felony convictions, giving the highest quality representation to those who could not afford to retain a lawyer. He worked through various organizations to improve the state's criminal justice system and, in particular, to create a statewide public defender system.

Norris was well known for his creative intelligence, his commitment to principle and for never giving up on even the hardest cases. He cared deeply about the impact that lack of opportunity has on individuals and the community. We will miss his wise counsel but will try to emulate his values as we work for a just society that treats all its children well.



CAPPS Recommendations for Improving and Enforcing Parole Guidelines

The best way to maximize public safety and public dollars is to release prisoners who have served their time and pose little risk to the community. CAPPS' recommendations for making parole decisions fairer, more cost-effective and more transparent will help ensure that only those people who actually pose a continuing threat to the public are incarcerated after they have served their minimum terms. Over time, these suggestions could save taxpayers tens of millions of dollars.

1. Clarify that the purpose of the parole guidelines is to assist the board in making parole decisions that implement the intent of the sentencing judge, to the extent consistent with public safety.
2. Require the guidelines to:
 - a. provide for public protection
 - b. reflect a prisoner's actual current risk for reoffending
 - c. encourage positive institutional conduct and participation in prison programs
 - d. avoid the use of secure prison beds by people who can reasonably return to the community.
3. Apply the guidelines to all prisoners eligible for parole.
4. Validate the statistical relationship to the risk of re-offending of:
 - a. the offense for which the person is incarcerated
 - b. current age
 - c. prior criminal record
 - d. institutional conduct
 - e. other relevant factors that predict re-offense risk.
5. Require the guidelines to also address the person's:
 - a. institutional program performance
 - b. length of time served
 - c. mental health
 - d. physical health
 - e. previous experience with probation or parole.
6. Prohibit basing departures from the guidelines on factors already accounted for by the sentencing or parole guidelines unless the board finds from facts in the record that the factor has been given inadequate or disproportionate weight.
7. Record parole board interviews conducted with people whose guidelines scores indicate a high probability of parole.
8. Permit prisoners, including those eligible for parole under the lifer law, to appeal denials of parole by leave to the sentencing court only on the following grounds:
 - a. the person scored "high probability of release" and the board's reasons for denying parole were not substantial and compelling
 - b. denial resulted from a material mistake in the parole guidelines scoring
 - c. denial resulted from reliance on inaccurate or incomplete information.
9. Notify prisoners denied parole of the scope of their right to appeal and any applicable deadlines.
10. Prohibit continuances of longer than 12 months for prisoners who score high probability of parole on the guidelines and are not serving life sentences.



Michigan prisons bulging

Wednesday, January 17, 2007

By Judy Putnam

Lansing Bureau

LANSING -- Michigan's prisons are packed to the gills with a record high number of inmates, driven by a parolee's murder spree last year, state officials said.

Michigan ended 2006 with 51,570 inmates, up from 49,493 in 2005, according to the Michigan Department of Corrections. The previous high was 50,591 at the end of 2002.

The unexpected 2,077-inmate jump last year was more than enough to fill a new prison, but officials instead squeezed inmates into the state's existing 50 facilities.



TV rooms, weight rooms, and office and storage space were cleared for beds, and lower-security prisons with six-bed dormitory-style rooms had a seventh bed shoehorned in.

The growth is straining a state budget that is already under severe pressure, with revenues falling \$850 million short of projections this year, according to Senate Fiscal Agency estimates.

Plans to fill 212 corrections officers positions have been put on hold, said Russ Marlan, Corrections spokesman. The department had planned to hire 700 officers this fiscal year to fill vacancies, but stopped at 488, he said.

Prison officials say the February slayings of three people by Patrick Selepak, a parolee returned to prison for violating parole and then released without a required hearing, helped drive up the prison commitment rate, drop the parole rate and increase the number of parolees returned to prison for violating parole.

"We've seen some substantial jumps and, for us, it's all bad because it means more people in prison beds," Marlan said.

Parole rates, for example, dropped immediately after the slayings from 54.4 percent in February to 48 percent in March. The overall decline for the year was enough to keep 725 inmates behind bars. Parolees returned to prison for technical violations also jumped 12 percent to 3,191, Marlan said.

Barbara Levine, executive director of the Michigan Citizens Alliance on Prisons and Public Spending, said the reaction to the Selepak case means the state is spending more to hold thousands of low-risk inmates.

"It just diverts tens of millions of dollars that could go to many urgent needs, including child protection, revenue sharing for local police and other crime preventive services," she said.

Union leader Mel Grieshaber, executive director of the Michigan Corrections Organization, said he worries that short staffing could lead to safety concerns. He said all of the 700 new corrections officers are needed.

"When they start taking money out of the budget, the corrections officers start sweating," he said.

Although the state has hired 1,342 officers over the past four years, plus the 700 planned this year, that hasn't been enough to keep up with turnover. MCO has 9,000 officers, down from the peak of 10,000 officers in 2001, Grieshaber said.

Grieshaber said the union is constantly arguing for more staff, especially at some of the minimum- and medium-security prisons in pole-barn structures, where sometimes just three officers guard about 280 inmates at night. Those inmates are not locked into cells, Grieshaber said.

Marlan contends that staffing has been kept at adequate levels.

A recent report by the U.S. Department of Justice found Michigan's incarceration rates second-highest in the 12-state Midwest region, second only to Missouri's. Michigan's rate, 489 inmates per 100,000 residents in 2005, is the 11th highest in the country.

Tom Clay, of the independent policy group Citizens Research Council, said if Michigan would lower its incarceration rate to that of other Great Lakes states, it would save \$500 million a year. He said Michigan's incarceration rate is 40 percent higher than those other states, due to longer sentences.

"It is the one place in the state budget that really stands out from being different from states where we typically compare ourselves," Clay said.

Michigan spends \$1.9 billion annually on its prisons, more than the \$1.6 billion spent on public universities.

State officials say they hope the 2-year-old Michigan Prisoner Re-Entry Program, which focuses on helping parolees find jobs and decent housing, will eventually help control the prison population.

Of the 4,634 prisoners released through the program since 2005, 402 have returned to prison. That's 104 fewer than would be expected without the program, according to a department study.

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Michigan children hit hard in dismal economy

Spending trends show commitment wavering to most vulnerable

State funding for services to aid children and families has, in most cases, dropped in recent years – at a time when families need help the most, according to Michigan's Children, a state-wide, non-partisan, multi-issue child advocacy organization.

An analysis of state spending released in December 2006 shows that despite some increases from 2006 to 2007, overall funding since 2001 for many child and family services has been cut or eliminated, or hasn't kept pace with inflation, rising costs and rising need. In only a few cases has funding been increased.

"Too many children in Michigan are hurting, and their pain is deepening as fewer services are available to help them and the revenue base to support those services continues to erode," said Sharon Claytor Peters, President & CEO of Michigan's Children. Peters is also a past member of the CAPPS board of directors.

A few highlights from the report:

- Funding for most major child abuse and neglect prevention programs has been cut as much as 15 percent despite a 5 percent increase in the number of child abuse and neglect victims.
- While the percentage of children living in poverty has jumped 31 percent, monthly welfare grants to most families have remained unchanged since 1993, dropping their purchasing power by over one third.
- Lawmakers for the first time since 2000, increased funding in the 2007 budget for early education. Still, overall funding has dropped 34 percent since 2001.
- As more parents take on second and third jobs to help make ends meet, they're getting less help with child care. Eligibility dropped from 185 percent of poverty to 150 percent, and the number of child care hours eligible for subsidies dropped from 140 to 100 in a two-week period.

"We all know that children are our future

and we must provide them with the best start possible," Peters said.

Additional facts at a glance:

- One in five Michigan children under the age of 5 lives in poverty.
- Three out of five low-income Michigan children whose care is supported by a subsidy are in unregulated child care settings.
- Half of all Michigan children under the age of one are insured by Medicaid.
- One in five Michigan children is born to a mother who had inadequate prenatal care.
- Nearly 1,000 Michigan babies die each year before their first birthday.

Too many children in Michigan are hurting, and their pain is deepening as fewer services are available to help them and the revenue base to support those services continues to erode.

A copy of the full report is available at www.michiganschildren.org.

National research has demonstrated that early childhood intervention is the best way to reduce special education and welfare costs, increase school performance and high school graduation rates, strengthen earnings and tax contributions and prevent future crime.

A report released by *Fight Crime: Invest in Kids Michigan* says, "Law enforcement leaders recognize that among the most powerful weapons to prevent crime and violence are preschool programs that help kids get the right start in life." Cited are reductions in behavioral problems, aggressive acts and poor temper control in children and adolescents resulting from high quality early interventions as well as reduction in juvenile delinquency, drug and violent crime arrests in later life.

CAPPS advocates shifting state resources from excessive incarceration to programs, like those for children and youth, that prevent crime.

Caution that timing, fear of parole mistakes key

Legislators say state budget problems may impact parole

Two state legislators talked about the tension in making decisions that might save money for the state and treat people more fairly and the fear of allowing the parole of someone who might commit new crime, as they addressed CAPPS' annual membership meeting in Lansing late last year.

Sen. Michael N. Switalski (D, Roseville) and Valde Garcia (R, Howell), both served on the Senate Subcommittee on Corrections Appropriations in the session that ended in December. Both will be members of the overall Senate appropriations committee this term, with Switalski serving as minority vice chair.

Garcia, a senator since 2000 and the son of migrant farmers, is the state's first Hispanic senator. He told the nearly 60 attendees that he believes the number one priority of government is to protect people. He said issues should be brought to his attention – "the squeaky wheel gets the grease" – but that he would be reluctant to pass laws he believed would endanger the public

or encumber the process, such as allowing appeal of parole decisions.

"(If we increase paroles) great, we're going to save money. On the other hand, we're going to release a whole bunch of folks," Garcia said. Referring



Sen. Garcia

to the murders by parolee Patrick Selepak, Garcia continued, "What if just 2 percent turn out to be bad actors and do what was done in Macomb County? We can't afford to be wrong."

Garcia said the general public thinks that people in prison have done something wrong so they should stay there forever. "We know that's not always the case, and sometimes people who are in prison shouldn't be there because judges

aren't perfect."

Switalski said the Macomb County killings "had a negative effect on the parole board; (the members) became very reluctant to parole cases they would have paroled before. They're so afraid of being criticized if they make a mistake."

He said he believes that fear is behind the current rise in the state's prison population which reached 51,000 late last fall.

In discussing the release of parolable lifers, Switalski, elected to the senate in 2002 and sponsor of bills designed to improve the review process for parolable lifers, said: "The board's afraid that if they're paroling someone with the word 'lifer' attached to the sentence, that they'll be criticized if something ever happens. 'A lifer? You let a lifer out!'"



Sen. Switalski

About the legislation he has sponsored requiring in-person interviews with lifers at five-year intervals: "Is it too much to ask that a board member sit down face-to-face with a lifer once every five years? I think not. They need to give a person an opportunity to present their case."

Switalski also said he believes there is no reason not to calculate guidelines scores for parolable lifers. "I think they will demonstrate that a lot of these prisoners are good risks. If they're scoring high on the guidelines there's a reason to assume they're a good risk."

One of his proposed laws would create a special board to review the cases of those who have served at least 30 years.

"Parolable life doesn't mean never paroled. There's a reason for the word parolable; we have

(Continued on page 12)



Among those attending the annual meeting were, Sandy Girard (left hand picture) and Dena Anderson, Ellen Hoekstra, Noah Smith, Ron Bretz and Jacque McDaniel.

Legislators discuss parole board, framing legislative approaches

(Continued from page 11)

to treat them differently (than mandatory lifers). When they were sentenced to parolable life, there was an assumption that there would be an opportunity for parole," he said.

Both Garcia and Switalski told the audience they support restoring funding for the Corrections Ombudsman's Office. Both also agreed that making it easier for parolees to succeed through a re-entry program, now being run by the department of corrections, is important.

"Once (prisoners) have served their sentences we want them to go out and have a fighting chance to be productive citizens," said Garcia. "We hope (the re-entry program) will work. We want it to work."

Both expressed reluctance to allowing judicial review of parole denials if that resulted in a large number of appeals.

The legislators were also asked how to frame issues to get legislative action.

Switalski told the group that showing how money saved by increased paroles could be shifted to something that has proven results would be helpful.

Said CAPPS President Ron Bretz: "We need money to pay for really important programs that are proven to prevent crime such as early child care. For those legislators who are afraid to vote for anything that will make them look soft on crime, can they look tough on saving money?"

Garcia said that. "Saving money gets our

attention, but again you're dealing with human lives. We're back to the number one function of government – to protect its citizens." He said that although some proposals have merit, timing of legislation is important in dealing with controversial issues.

In discussing the parole of people who are terminally ill, Penny Ryder, executive director of the American Friends Service Committee and a CAPPS board member, told the legislators that "People who are terminally ill and could be paroled aren't being processed at the rate they could be. The process is cloudy as to who is supposed to start it and where it's supposed to go. Every one of these dying prisoners is costing the state money. They should be returned home or there should be nursing homes set up for those with nowhere else to go." She said the costs could be picked up by the Veterans Administration, Medicaid or private health insurance but the money wouldn't come out of state revenues and wouldn't include custody costs.

Switalski said he agreed health care treatment would be cheaper in the community. "If they're not a risk we should pay special attention to them," he said. Garcia said the issue was one that the governor could handle.

Also during the meeting, members re-elected seven incumbents to the board of directors for three-year terms. They are: Gary Ashby, Robert Henning, Rose Homa, Ronald Jimmerson, Sr., Penny Ryder, Laura Sager and William Tregea.

Briefs filed in parolable lifer suit

Briefs have been submitted to the court in the class action lawsuit (*Kenneth Foster-Bey, et al., vs. John S. Rubitschun, et. al.*) filed on behalf of all parolable lifers who committed their crimes before Oct. 1, 1992.

The lawsuit was filed in 2005 in the U.S. District Court, Eastern District, by Attorney Paul D. Reingold and law students from the Michigan Clinical Law Program at the University of Michigan.

The plaintiffs are asking the court to order new parole hearings for them using the standards and procedures in effect when they committed their offenses. They allege that changes in the law, including the reconstitution of the parole board in 1992 and subsequent changes in the process for reviewing lifers, have "created a different parole regime in violation of the ex post facto clause of the United States Constitution." The current parole board has adopted the philosophy that "life means life" and releases very few lifers other than those convicted of drug offenses. More than 800 parolable lifers, all of whom became eligible for parole after serving 10 years, are affected. Many have now served more than 25 years.

Both the plaintiffs and the defendants have requested summary judgment (a decision without a trial). Oral arguments are scheduled before Judge Marianne O. Battani in February 2007. Both parties are likely to appeal a grant of summary judgment to the other side. If summary judgment is not granted, a date will be set for trial.

The brief relies in part on CAPPS' historical research on parole grant rates. The Sept. 2006 report entitled: "*When 'life' did not mean life: A Historical Analysis of Life Sentences Imposed in Michigan Since 1900*," is at the CAPPS website: www.capps-mi.org. The research showed that:

- Overall, nearly 73% of the people sentenced to life terms during the first seven decades of the century for crimes other than first-degree

murder were released after serving an average of fewer than 16 years.

- Only 8.2% of people similarly sentenced from 1970-1985 have been released to date.

- For non-drug lifers convicted before 1980, the chance of being paroled was more than 43 times greater when they committed their offenses than it is today.

Plaintiffs' counsel obtained declarations from many former Michigan Department of Corrections officials and parole board members, including Perry Johnson, MDOC director, 1972-1984; William Kime, research director, 1969-1991; William Hudson, parole board chair, 1980-1985; Robert Brown Jr., MDOC director, 1984-1991; and Gary Gabry, parole board chair, 1992-1996.

The general consensus of the declarations was that the pre-1992 board treated parolable lifers and people serving long indeterminate sentences similarly. While lifers were required by statute to go through a more complex process, the board applied the same standard in evaluating everyone who served a long time for a serious offense, once he or she became eligible for parole.

Lifers were interviewed regularly and advised about what they needed to do to earn release. File notes were kept so that members' views about when parole would be appropriate could be tracked from year to year. While some parolable lifers were never released, the assumption was that most would be paroled in fewer than 20 years. "Life means life" only applied to people serving for first-degree murder.

An editorial in the Jan. 17, 2007 Detroit Free Press urged the parole board and the legislature not to wait for the outcome of the suit. Noting the state's budget shortfall and the fact that hundreds of middle-aged lifers could be safely released, the editorial concluded: "The Parole Board ought to review these cases as they do other inmates with parole eligibility, even if that requires a special panel to handle the backlog."

Faces behind the figures

Are we safer because they're behind bars?

Another in a series of CAPPs profiles of prisoners currently eligible for parole

Aldo Gallina, No. 205962

Aldo Gallina, who has no prior offenses and spent two years attending community college while on bond pending appeal, has a fine institutional record, an excellent therapy report and unshakable family support. While his co-defendant, with a similar history, was released in 2005, Gallina has been denied parole for a second time.

On July 2, 1989, when Aldo Gallina was 15, he was out riding in Dearborn with other teenagers. They became involved in a confrontation with boys in another car that ended with the shooting death of 15-year-old Charles Schramek. While Gallina and his 16-year-old co-defendant, Eric Rode, both admitted firing the gun that Gallina pulled from the glove compartment, each denied having fired the fatal shot. The prosecution charged Gallina as an aider and abettor on the theory that Rode was the shooter. Gallina and Rode were tried together as adults and convicted of second-degree murder. Both were sentenced to serve 15-30 years in prison, plus an additional two for felony firearm.

Gallina, the second of six children, was raised in a stable, supportive family environment. He was an average student who played junior varsity football and had no juvenile record or discipline problems. The presentence investigator described him as "somewhat mild-mannered" and "soft-spoken."

During the lengthy appeal process, Gallina and Rode both spent two years on bond in the community. Gallina lived with his family, worked full-time, and earned 33 credits with a major in Fire Science Technology at Henry Ford Community College. He was under no court supervision and had no police contact.

Gallina has also done well in prison, earning good work reports and few misconduct citations; his last "ticket" was in 1997 for being out of place. He served on work crews in the com-

munity and resides in a minimum-security prison camp. His family has visited him every two weeks throughout his incarceration, even while he was in a Virginia prison during a period of extreme prison overcrowding in Michigan.

Gallina was unable to gain entry into required assaultive offender therapy until August 2005, just two months before he completed his minimum sentence. Because Gallina scores "high probability for parole" on the parole board's own guidelines, indicating he is a low risk for re-offending, the board must give "substantial and compelling reasons" for not releasing him. In September 2005, when it continued him for a year, it said:

Although P[risoner] has done well at work, programs & behavior & expresses remorse, he needs to complete the Assaultive Offender Therapy he is just beginning. P needs to gain greater insight into his behavior/understanding & empathy re the harm he has caused

Gallina completed the therapy, known as AOT, in June 2006. The therapist wrote: "He displayed full and complete acceptance of responsibility for his criminal behavior with significant evidence of remorse and empathy." The therapist characterized Gallina's support plan as "formidable" and found "significant evidence of the internalization of change." He said that Gallina's relapse prevention plan demonstrates "an outline/map for success." Gallina wrote to his family:

I worked very hard the last 44 weeks and it shows in this report...I did everything I could do, so no matter what, I can say that.

In October 2006, the parole board continued Gallina for a second year. It gave as its substantial and compelling reason:

(Continued on the next page -- see Galina)

Gallina

Despite completion of recommended therapy, the Parole Board is not assured that his risk of re-offending has been diminished. Prisoner is deemed an unwarranted risk to public safety. Unwilling to parole at this time.

Gallina, now 33, and his family were stunned. Eric Rode, who had been able to complete AOT on time, had been paroled when he first

became eligible in November 2005. Ironically, the board's notes regarding Rode are equally true of Gallina: good family support, good AOT, limited prior record, excellent staff and work reports, in community for two years on bond pending appeal, good parole plans, crime out of character, spent more than half his life in prison, has matured much in last 16 years.

Gallina's next parole re-consideration date will be in October 2007, about the same time Eric Rode will discharge from parole supervision.

More pictures from the 2006 annual membership meeting



We've moved . . . just a little

Please note that CAPPS has moved its offices from the eighth floor to the fourth floor in the same office building. The new address is: CAPPS, 115 W. Allegan St., Suite 401, Lansing, MI 48933

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The Citizens Alliance on Prisons and Public Spending, a non-profit public policy organization, is concerned about the social and economic costs of prison expansion. Because policy choices, not crime rates, have caused our prison population to explode, CAPPS advocates re-examining those policies and shifting our resources to public services that prevent crime, rehabilitate offenders, and address the needs of all our citizens in a cost-effective manner.

Be part of the solution -- Join CAPPS

Citizens Alliance on Prisons and Public Spending Membership Form

CAPPS, 115 W. Allegan St., Suite 401. Lansing, MI 48933; Phone: (517) 482-7753;
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My tax deductible contribution, payable to "CAPPS," is enclosed.

My membership category is:

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